THE RISE OF DISTINCT "COMMON LAW" FINANCIAL ZONES IN ISLAMIC COUNTRIES

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ABSTRACT

This article investigates four instances of the transplantation of English commercial law (broadly defined) into a different legal environment. The financial centers in Dubai (UAE), Abu Dhabi (UAE), Doha (Qatar), and Astana (Kazakhstan) have adopted a legal regime based on English Common Law, despite their national civil law and Islamic traditions. This choice on the face of it seeks to create an attractive business environment through optimal protection of market participants' rights. This research appraises comprehensively, through a comparative perspective, the unique institutional and regulatory model adopted and practiced by the four zones: the Dubai International Financial Center (DIFC), Abu Dhabi Global Market (ADGM), Qatar Financial Center (QFC), and Astana International Financial Center (AIFC). There are three dimensions of comparison: (1) comparing the centers' rules and regulations with their U.K. counterparts to reveal the degree of legal transplantation; (2) comparing the centers' rules and regulations with their domestic counterparts to explore a potential regulatory gap between the two systems; and (3) comparing the four different regimes to reveal their potentially different experiences. Through a rigorous comparative examination of the experiences of the four zones, this research provides fresh perspectives to the need for robust law in economic and financial development, through legal transplantation to achieve such purpose. The four zones have provided an excellent natural experiment for these enduring theoretical debates.

Keywords: Dubai International Financial Center (DIFC); Abu Dhabi Global Market (ADGM); Qatar Financial Center (QFC); Astana International Financial Center (AIFC); common law; civil law; Islamic countries; legal transplantation.

I. INTRODUCTION

The three countries studied by this article, namely the United Arab Emirates (UAE), Qatar, and Kazakhstan share some similarities. They are Islamic countries.[1] Also, they enjoy an abundant amount of natural resources, which is an important pillar of their respective economies.[2] In the context of this article, the most important similarity is that they are all looking to diversify their oil and gas-

[1] Although Kazakhstan is a secular state under its constitution, Islam is its *de facto* national religion. More discussion on this point will follow later in the work.

[2] *Regional Economic Outlook: Middle East and Central Asia*, IMF (Oct. 2024), https://www.imf.org/en/publications/reo/meca/issues/2024/10/24/regional-economic-outlook-middle-east-central-asia-october-2024.

reliant economies.[3] Therefore, one strategy is to develop a commercial or financial center in their territory. This article seeks to explore the institutional development of four financial centers in the Middle East and Central Asia, which all have allegedly transplanted English law into their institutional framework as a strategy to attract businesses and investors. These four financial centers are, in the order of the time of establishment, the Dubai International Financial Center (DIFC), Qatar Financial Center (QFC), Abu Dhabi Global Market (ADGM), and Astana International Financial Center (AIFC).

The key institutional innovation of these financial zones is their transplanting and operation of laws based on the English common law, independent of their national legal systems (civil law systems, influenced by Islamic tradition, and, in the case of Kazakhstan, also Soviet socialist principles).[4] The four zones are in different stages of their developments. The DIFC was established in 2004, as the pioneer in introducing this groundbreaking institutional model.[5] The QFC quickly followed suit in 2005.[6] The ADGM and AIFC, launched in 2013 and 2018 respectively, are relatively late adopters.[7] Here, the notion of "common law" is not just restricted to the idea of the body of unwritten laws based on legal precedents established by the courts, but it can also cover the selective transplantation of legislations, predominantly from the U.K.[8]

This work will appraise comprehensively, through a comparative perspective, the unique institutional and regulatory model adopted and practiced by the four zones and will form a three-dimensional comparison. Different aspects of the zones are considered, for example, in relation to their constitutional foundations, preferential treatment of operating in the zones, the body of bespoke statutes, and their common law court system. The three dimensions of comparison are as follows: (1) comparing the centers' rules and regulations with their U.K. counterparts to reveal the degree of legal transplantation; (2) comparing the centers' rules and regulations with their domestic counterparts to explore a potential regulatory gap between the two systems; and (3) comparing the four different regimes to reveal their potentially different experience, particularly in relation to institutional quality and enforcement, in transplanting commercial laws, especially corporate and financial laws from the U.K.

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3 *See, e.g.*, *Dubai Economic Agenda D33*, UAE, https://u.ae/en/about-the-uae/strategies-initiatives-and-awards/strategies-plans-and-visions/finance-and-economy/dubai-economic-agenda-d33 (last updated Sept. 5, 2023); *100 Concrete Steps*, HONORARY CONSULATE REPUBLIC KAZAKHSTAN (May 20, 2015), https://kazakhconsuldhaka.com/100-concrete-steps.php.

4 *See, e.g.*, Horace Yeung et al., *Institutional Development and the Astana International Financial Center in Kazakhstan*, 19 WASH. U. GLOB. STUD. L. REV. 53, 62 (2020).

5 *Laws & Regulations*, DIFC, https://www.difc.ae/business/laws-and-regulations (last visited Jan. 31, 2025).

6 *Overview*, QFC, https://www.qfc.qa/en/about-qfc/overview (last visited Jan. 31, 2025).

7 *Federal Legislation*, ADGM, https://www.adgm.com/legal-framework/federal-legislation (last visited Jan. 31, 2025); Assel Satubaldina, *Kazakhstan Launches AIFC, Seeks to Become Regional Financial Hub*, ASTANA TIMES (July 9, 2018), https://astanatimes.com/2018/07/kazakhstan-launches-aifc-seeks-to-become-regional-financial-hub/.

8 *See* Parts V & IV.

This work will proceed as follows. Firstly, a brief literature review will be made to reflect on what common law is and what advantages it can offer. Here the focus is particularly placed on a widely cited, but at the same time, controversial empirical study conducted by economists that suggested that common law is more conducive to financial development.[9] Secondly, the work will look at the constitutional foundations of the zones. Given that the home countries of these zones have entirely different legal systems, modifications to national constitutions are required to permit and enable a "system within a system."[10] Also, these zones all have a "mini-constitution" of their own to set out the fundamental principles of their establishments and operations.[11] Before moving on to the institutional arrangement of the zones, the work will first provide an overview of their national legal systems. Then, the article will study the zones in detail. Firstly, with respect to the basket of bespoke statutes in place, as well as the incentives offered to the registered entities within the zones. Afterward, through the lens of company law as an example, it will reveal the degree of legal transplantation and how the zones might have transplanted the law from the U.K. Here, three important areas of company law are considered: the options of business forms, director duties, and shareholder remedies. Subsequently, the work will continue to an important aspect of the zones, that is, an independent judiciary in the form of a common law court system. It is a common practice for the zones to invite judges from common law countries to sit on their courts.[12] Here, the concern particularly lies within how the zones' courts' use legal precedents, as well as the potential jurisdictional conflicts between local courts and the zones' courts. Finally, the work will consider the implications of the experience of the zones before an overarching conclusion is made.

II. IS ADOPTING COMMON LAW MAKING ANY SENSE?

According to Black's Law Dictionary, common law is a "body of law and juristic theory which was originated, developed, and formulated and is administered in England [and the states and peoples of Anglo-Saxon stock]."[13] In addition to the enactment of legislatures, under this system, legal authority can also be derived from the judgments and decrees of the courts.[14] An important principle is *stare*

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[9] *See* Rafael La Porta et al., *Legal Determinants of External Finance*, 52 J. FIN. 1131, 1131 (1997) [hereinafter *Legal Determinants*]; Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113, 1113 (1998) [hereinafter *Law and Finance*]; Rafael La Porta et al., *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3, 8 (2000) [hereinafter *Investor Protection*].

[10] For the variety of legal systems in the world, and the question of which country belongs to which system, a good starting point will be the World Factbook compiled by the CIA. *See The World Factbook: Legal System*, CIA, https://www.cia.gov/the-world-factbook/field/legal-system/ (last visited Feb. 1, 2025).

[11] *See* Part III.

[12] *See* Part VII.

[13] *Common Law*, BLACK'S LAW DICTIONARY (10th ed. 2015).

[14] *Id.*

decisis, under which courts must follow earlier judicial decisions when the same points arise again in litigation.[15] In other words, judges have the power to set out new legal principle, effectively making new laws.[16] In contrast, in a civil law system, an expert judge "decides cases without any reference to precedent."[17] Other than the legally binding nature of case law, the differences between the two major legal systems can also be seen in other areas. A summary of key differences between common law and civil law jurisdictions is given in Table 1.[18]

According to Wood, there are about 320 jurisdictions in the world.[19] This is different from the concept of a nation-state. For example, currently, there are 193 member states in the United Nations, providing a good indication of the number of nation-states in the world. Within each nation-state, there can be a number of jurisdictions.[20] The United States has fifty-one, and the U.K. has seven.[21] Out of these 320 jurisdictions, more than forty-five percent (45%) can be broadly categorized as the common law group; over thirty-five percent (35%) as the civil law group; and the rest to either mixed/Islamic/new/unallocated systems.[22] In general, common law is normally used in countries formerly part of or influenced by the former British Empire, such as the United States, Canada, Singapore, Hong Kong, India, and Australia.[23] Meanwhile, civil law is "the most widespread type of legal system in the world," in a nation-state sense.[24] Out of the top ten largest economies, six of them belong to the civil law family (China, Japan, Germany, France, Italy, and South Korea) and four of them to the common law family (the United States, India, the U.K., and Canada).[25]

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15 *Common Law*, *supra* note 13.

16 For example, in *Nat'l Westminster Bank plc v. Spectrum Plus Ltd.*, [2005] UKHL 41, at 12, Lord Nicholls of Birkenhead said, "The common law is judge-made law."

17 *Civil Law*, LAW DICTIONARY, https://thelawdictionary.org/civil-law/ (last visited Feb. 2, 2025).

18 *See infra* Table 1.

19 PHILIP WOOD, THE LAW AND PRACTICE OF INTERNATIONAL FINANCE 15 (2008).

20 These include the 50 states in the United States and the federal government. For the U.K., they are England, Scotland, Wales, Northern Ireland and the three Crown Dependencies of Jersey, Guernsey and the Isle of Man respectively. *See UN Membership*, U.N., https://research.un.org/en/unmembers/currentmembers#s-lg-box-33217190 (last updated Apr. 2, 2025).

21 WOOD, *supra* note 19.

22 *Id.* at 16. The common law group can be subdivided into American/English common law jurisdictions. Similarly, the civil law group can also be subdivided into Napoleonic/Roman-Germanic civil law jurisdictions. The examples of jurisdictions falling into the third group include the Channel Islands, Saudi Arabia, Vietnam, Antarctic, etc.

23 *The World Factbook: Legal System*, *supra* note 10.

24 *Id.*

25 World Bank, *GDP (Current US$)*, WORLD BANK GRP. https://data.worldbank.org/indicator/ny.gdp.mktp.cd?most_recent_value_desc=true (last visited Mar. 17 2025); *See The World Factbook: Legal System*, *supra* note 10 (the classification of individual legal system according to the CIA Factbook).

The correlations between law and financial development are at the core of law and finance studies.[26] The prominence of the common law system has been underlined by the studies by La Porta and colleagues.[27] They examined legal rules covering the protection of corporate shareholders and creditors, the origin of these rules, and the quality of their enforcement in forty-nine countries.[28] From their statistical results, they alleged that the legal environment, including both legal rules and their enforcement, matters for the size and extent of a country's capital market.[29] The logic of it is not difficult to understand. This is because a good legal environment protects the potential financiers against expropriation by entrepreneurs. Investors are more willing to surrender funds in exchange for securities and therefore expand the scope of capital markets.[30] Furthermore, based on their statistical results, they alleged that French civil law countries with the weakest investor protection had smaller and narrower capital markets.[31] La Porta and colleagues' studies have been undoubtedly seminal but at the same time highly controversial and widely scrutinized.[32]

While statistical analysis is widely utilized in the field of social science to reduce complexity, giving legal rules "ones" and "zeros" may reduce the "richness of detail" in legal research.[33] In fact, as indicated by Spamann, many of the initial results from La Porta and colleagues are not robust to the correction of coding errors.[34] Legal rules differ across many relevant dimensions, particularly in

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[26] Mathias Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L. J. 55, 57 (2007).

[27] *See Legal Determinants*, *supra* note 9; *Law and Finance*, *supra* note 9; *Investor Protection*, *supra* note 9.

[28] *Legal Determinants*, *supra* note 9, at 1132.

[29] *Id.*

[30] *Id.* at 1149

[31] *Id.*

[32] For example, Siems made the following remarks in his article, "Law and finance studies have received a lot of criticism. In particular, the relevance of legal origins for financial development is doubtful." *See* Siems, *supra* note 26, at 62.

[33] KENNETH W. DAM, THE LAW GROWTH NEXUS: THE RULE OF LAW AND ECONOMIC DEVELOPMENT 171 (2006).

[34] Holger Spamann, *The "Antidirector Rights Index" Revisited*, 23 REV. FIN. STUD. 467, 469 (2010). The "antidirector rights index" was introduced in La Porta and colleagues' seminal "Law and Finance." La Porta and colleagues' later articles such as "Legal Determinants of External Finance" and "Investor Protection and Corporate Governance" were largely based on the original index, although an alternative index was available in their "What Works in Securities Law?" in 2006. A thorough re-examination of the original antidirector rights index by Spamann leads to corrections for 33 of the 46 countries analysed. The corrected index fails to support some of the widely influential claims made by La Porta and colleagues, for example, shareholder protection is higher in common than in civil law countries, and that shareholder protection predicts stock market size or ownership dispersion. But even "What Works in Securities Law?" in 2006 concerning the effect of securities laws has been criticised. For example, questionnaires used strongly reflected a biased approach to securities law that is derived wholly from United States law. *See* Rafael La Porta et al., *What Works in Securities Laws?* 61 J. FIN. 1 (2006); Mathias Siems, *What Does Not Work in*

international comparison. It is simply very difficult to draw the lines in each of them by variable definitions. As suggested by Siems, it is overly simplistic to examine how different legal families shape finance.[35]

The overemphasis on legal families/origins, with little regard to each particular country's actual "demand for law" has also attracted criticism from other scholars.[36] The co-existence of strong laws and strong financial markets may well imply an opposite causal relationship; that is, a successful market may manage to devote more resources to its regulatory regimes.[37] To unearth the causal relationship, a subsequent study conducted by Armour and colleagues employed time-series data.[38] The researchers agreed that legal origin may partly explain the pattern of change in shareholder protection measures, but the link between increased shareholder protection and financial development may not be apparent.[39]

Furthermore, some studies highlighted the need to consider the wider institutional environment. For example, Daniels and colleagues believe that the success of some former British colonies was largely due to the degree of responsiveness to citizen needs.[40] For the reason why the English judicial system proved better than its civil-law counterparts in protecting individual rights, Coffee attributed it to a more decentralized system of English judges that was more independent of the state.[41] While La Porta and colleagues pointed out the importance of legal foundation in terms of shareholder protection to capital market development, Roe preferred the political-economy-based theories to the legal origins theory.[42] He argued that continental social democracies did not provide institutions that securities markets need, such that the markets in continental Europe flourished to a lesser degree than their Anglo-American counterparts. In social democracies, employees are protected from actions that a company would often take to maximize the shareholder's value. Therefore, Roe's argument is that "where

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Comparing Securities Laws: A Critique on La Porta et al.'s Methodology, 16 INT'L CO. AND COM. L. REV. 300 (2005). Also, as indicated by Spamann, a detailed coding protocol has never been available in La Porta and colleagues' research to ensure consistent coding of the raw data into numerical index values.

35 Siems, *supra* note 34.

36 *See, e.g.*, Daniel Berkowitz et al., *Economic Development, Legality and the Transplant Effect*, 47 EURO. ECON. REV. 165 (2003). A mere categorisation of a system as common law or civil law disregards deeper legal structures.

37 *See* John Coffee, *The Future as History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 NW. U. L. REV. 641 (1999); Brian Cheffins, *Law as Bedrock: The Foundations of an Economy Dominated by Widely Held Public Companies* 23 OXFORD J. LEGAL STUD. 1 (2003).

38 John Armour et al., *Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis*, 6 J. EMPIRICAL LEGAL STUD. 343, 344 (2009).

39 *Id.*

40 Ronald Daniels et al., *The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies,* 59 AM. J. COMPAR. L. 111 (2011).

41 John Coffee, *The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control*, 111 YALE L. J. 1, 61 (2001).

42 Mark Roe, *Political Determinant of Corporate Governance*, 2003 JOHN M. OLIN. CTR. FOR L., ECON., AND BUS. 1, 4 (2003).

labor's influence is strong, concentrated ownership should persist as a countervailing power and, hence, equity markets should develop less strongly," and he supports his argument by showing the correlation between political orientation and ownership structure.[43] Even more importantly, Roe has been right to point out that the classic differences between legal origins had been exaggerated. The regulatory structure of a financial market, a set of effective commercial/financial laws revolving around an efficient regulator, is not indeed an intrinsic common law institutional advantage.[44]

III. THE CONSTITUTIONAL FOUNDATION OF THE ZONES

The DIFC is a geographic and legal jurisdiction within the emirate of Dubai, part of the federation of the UAE.[45] In 2004, the UAE constitution was amended to allow an emirate to establish a "financial free zone," a separate legal, geographic, and judicial jurisdiction.[46] Federal Law No. 8 of 2004 of the UAE allows a free zone to be established by Federal Decree.[47] The zone shall be subject to all federal laws, with the exception of federal civil and commercial laws.[48] This on the one hand empowered the DIFC to create its own legal and regulatory framework for all civil and commercial matters.[49] On the other hand, it confirmed the application of federal criminal laws in the zone, including the federal laws on anti-money laundering.[50] Federal Decree No. 35 of 2004 officially created the DIFC as a financial-free zone in Dubai with an accompanying cabinet resolution setting out the geographic boundaries of the DIFC.[51] Furthermore, Dubai Law No. 9 of 2004 acknowledged and confirmed the creation of the DIFC by recognizing its financial and administrative independence and creating essential bodies, which include the DIFC Authority,[52] Dubai Financial Services Authority[53] (DFSA), and DIFC Courts.[54]

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43 Mark Roe, *Legal Origins, Politics and Modern Stock Markets*, 120 HARV. L. REV. 460, 503 (2006).

44 Roe, *supra* note 43, at 481.

45 *See Who We Are*, DUBAI INT'L FIN. CTR. [hereinafter DIFC], https://www.difc.ae/who-we-are (last visited Jan. 31, 2025).

46 The Constitution of the United Arab Emirates July 18, 1971, Part 7, art. 121 (U.A.E.) (granting certain matters to the exclusive legislative jurisdiction of the U.A.E.).

47 *Laws & Regulations*, *supra* note 5.

48 Fed. Law No. 8 on Financial Free Zones art. 3(2) (U.A.E.) [hereinafter Fed. Law No. 8].

49 *Laws & Regulations*, *supra* note 5.

50 Fed. Law No. 8, art. 3(1) (U.A.E.).

51 *Laws & Regulations*, *supra* note 5.

52 Dubai Law No. 9 art. 6 (U.A.E.).

53 *Id.* at art. 7.

54 *Id.* at art. 8.

The DIFC Authority is responsible for overseeing the strategic development, operational management, and planning of the DIFC.[55] It is also tasked with the creation and enforcement of laws and regulations that are not specifically related to financial services firms.[56] The DFSA operates as an independent regulatory authority overseeing financial and related services conducted within or from the Centre.[57] Additionally, the DFSA supervises regulated entities and ensures their adherence to relevant laws and regulations.[58] The DIFC Courts are the designated legal fora for resolving all civil and commercial law disputes.[59]

As for the QFC, the Qatari Law No. 7 of 2005 became effective on 1 May 2005.[60] Although the country's first constitution was issued in 2004, it did not actually come into effect until after the establishment of the QFC.[61] However, the 2005 Law did make brief reference to its predecessor, the Amended Provisional Constitution 1972.[62] The 2005 Law sets out the structure of the QFC and establishes the independent bodies necessary for its operation.[63] These include the QFC Authority, QFC Regulatory Authority, Civil and Commercial Court (first instance and appellate divisions), and QFC Regulatory Tribunal.[64] The functions of the first three bodies are broadly similar to their Dubai counterparts and require no additional explanation.[65] But it is worth noting that the QFC Regulatory Tribunal is established as a specialist appeals body to hear complaints raised by individuals and corporate bodies against decisions of the QFC Authority, Regulatory Authority, and other QFC Institutions.[66] The Appellate Circuit of the Civil and Commercial Court shall have the jurisdiction to hear appeals against decisions of the First Instance Circuit, as well as appeals against decisions of the Regulatory Tribunal.[67] Except criminal law, the QFC laws and regulations shall apply to the contracts, transactions, and arrangements conducted by the entities established in or operating from the QFC.[68]

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55 *Laws & Regulations*, *supra* note 5.
56 *Id.*
57 *Id.*
58 *Id.*
59 *Id.*
60 *Laws & Regulations*, QFC, https://www.qfc.qa/en/laws-and-regulations (last visited Jan. 31, 2025).
61 *Qatar to Adopt First Constitution*, AL JAZEERA (June 8, 2005), https://www.aljazeera.com/news/2005/6/8/qatar-to-adopt-first-constitution. A provisional constitution was enacted in 1970, subsequently amended in 1972. *Constitution*, QATAR EMBASSY, https://www.qatarembassy.or.th/en/qatarinfo_political_constitution.html#:~:text=qatar's%20constitution%20has%20passed%20through,responsibilities%20of%20the%20new%20stage (last visited Jan. 23, 2025).
62 *See* Qatar Fin. Ctr. Law No. (7) Endnote 4 (Qatar) [hereinafter QFC Law No. (7)].
63 *See generally* QFC Law No. (7).
64 *See* QFC Law No. (7) art. 3, 4, 8.
65 *See Overview*, QFC, https://www.qfc.qa/en/about-qfc/overview (last visited Jan. 31, 2025) (explaining the overview of the QFC institutional structure).
66 QFC Law No. 7 art. 8(2).
67 *Id.* at art. 8(3)(d).
68 *Id.* at art. 18.

As for the ADGM, since Abu Dhabi is an emirate within the UAE, Federal Law No. 8 of 2004 applies which allows establishing a financial free zone in any Emirate of the UAE, by Federal Decree.[69] As noted before, it exempts financial free zones and financial activities from all federal civil and commercial laws when the UAE criminal law still applies.[70] The Federal Decree No. 15 of 2013 and its associated cabinet resolution formally established the ADGM as a financial free zone on Maryah Island in the emirate of Abu Dhabi.[71] Meanwhile, like its Dubai counterpart, ADGM requires Emirati legislation to set out the governance, legislative, and regulatory framework. The relevant legislation is the Abu Dhabi Law No. 4 of 2013.[72] The key bodies within ADGM are the Registration Authority, Financial Services Regulatory Authority, and ADGM Courts.[73]

Lastly for the AIFC, in December 2015, President Nazarbayev of Kazakhstan signed the Constitution of the AIFC which provides a legal framework for its establishment and operation.[74] The Constitution of Kazakhstan was amended to allow a "special legal order in the financial field" to be established within the territory of Astana.[75] According to this legal framework, the governing law of the AIFC is based on the Constitution of the Republic of Kazakhstan and will have a special legal regime consisting of its own laws and its own independent judicial system and jurisdiction, which will be based on English common law and standards of leading international financial centers.[76] The current laws of Kazakhstan apply to the extent that they do not conflict with the laws adopted by the AIFC.[77] The core administrative and regulatory structures of the AIFC include the Management Council, AIFC Authority, Astana Financial Services Authority, AIFC Court, and Astana International Arbitration Centre.[78]

In a nutshell, Table 2 summarizes the national legal bases enabling the establishment of the four financial centers.[79] As it can be seen, the process normally requires additions or changes to different levels of the law, from the constitutional level to dedicated statute(s) in creating the zone.

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69 *Federal Legislation*, ABU DHABI GLOB. MKT., https://www.adgm.com/legal-framework/federal-legislation (last visited Jan. 31, 2025) [hereinafter *Federal Legislation*].

70 *Id.*

71 *See generally* Federal Decree No. (15) of 2013 (U.A.E.).

72 *Federal Legislation*, *supra* note 69.

73 *Id.*

74 *See Legal Framework*, ASTANA INT'L FIN. CTR. [hereinafter AIFC], https://aifc.kz/legal-framework/ (last visited Jan. 31, 2025).

75 Const. of the Republic of Kazakhstan, June 8, 2022, § 1, art. 2 (Kaz.).

76 Const. Statute No 438-V ZRK of the Republic of Kazakhstan on the Astana International Financial Centre art. 4(1) (Kaz.) [hereinafter Constitution of the AIFC].

77 *Id.* at art. 9.

78 *Id.*

79 *See infra* Table 2.

IV. A SNAPSHOT OF THEIR NATIONAL LEGAL SYSTEM – HOW ARE THE ZONES DIFFERENT?

Naturally, if the countries have a reliable national legal system in regulating civil and commercial matters, it will not justify the need to have a separate system in place. This part will therefore seek to present a quick overview of their national systems before examining in more detail the legal framework in the zones.

A common feature between all four zones is that they all have a national civil law system.[80] In the cases of the DIFC and ADGM, the UAE adopts a dual legal system of civil and Sharia laws.[81] The UAE's constitution provides that Islam is the official religion of the Federation and the Islamic Sharia is a central source of its legislation.[82] However, the majority of codified laws in the UAE are a blend of Islamic law and other civil legal systems, including Egyptian and French civil law.[83] The Sharia law courts work alongside the civil and criminal courts.[84] The former has the exclusive jurisdiction to hear family disputes. Religious principles such as the prohibition of *Riba*, *Gharar*, and *Maysir* in financial transactions can have a direct impact on the operations of businesses.[85] The legal structure in the UAE runs in two systems: the Federal Judiciary presided by the Federal Supreme Court as the highest judicial authority in the UAE and the local judicial authorities in each emirate.[86]

In the view of Hamzeh, a unique legal system prevails in Qatar amongst the Arab Gulf states such as the UAE.[87] On the one hand, like the UAE, the dualism of civil and Sharia laws exists in the Qatari system.[88] On the other hand, the dualism there is "visible," as opposed to the UAE, as well as other states in the Gulf.[89] In a typical Gulf state, the basis of Islamic legitimacy and the Sharia law apply to all people, Muslims or not.[90] However, in Qatar, the economic activities and civil matters of non-Muslims are regulated by a special court, the *Adlia* court (civil court).[91] In other words, a separate jurisdiction has effectively long existed before

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80 *See, e.g.*, *The World Factbook: Legal System*, *supra* note 10.

81 *Id.*

82 Const. of the United Arab Emirates July 18, 1971, pt. 1, art. 7 (U.A.E.).

83 *The Federal Judiciary*, U.A.E. GOV'T PORTAL, https://u.ae/en/about-the-uae/the-uae-government/the-federal-judiciary (last visited June 8, 2023).

84 *Id.*

85 The meanings of the three words are: Riba (interest), Gharar (uncertainty), and Maysir (gambling). Md Akther Uddin, *Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir*, MUNICH PERSONAL REPEC ARCHIVE (Oct. 13, 2015), https://mpra.ub.uni-muenchen.de/67711/1/mpra_paper_67711.pdf.

86 Const. of the United Arab Emirates July 18, 1971, § 3, arts. 99, 104, 105.

87 A. Nizar Hamzeh, *Qatar: The Duality of the Legal System*, 30 MIDDLE EASTERN STUD. 79, 79 (1994).

88 *Id.*

89 *See id.*

90 *Id.* at 82.

91 *Id.* at 79.

the QFC.[92] Meanwhile, Muslims will settle their disputes through the Sharia court (Islamic court).[93]

In relation to Kazakhstan, there can be a doubt of whether it is an Islamic state (from a legal perspective). According to Article 1 of the Kazakhstan Constitution, "The Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state."[94] However, in reality around 70 percent of the population is Muslim, broadly the level as seen in the UAE and Qatar.[95] In the view of Cornell and colleagues, Islam in Kazakhstan has remained largely the domain of individual belief, and not translated into politics.[96] According to a 2013 global Pew survey of Muslims' attitudes, Kazakhstan has among the lowest levels of support of any Muslim country for Sharia law: only 10 percent of Kazakhs support it.[97] The CIA World Factbook describes its legal system as a "civil law system influenced by Roman-Germanic law and by the theory and practice of the Russian Federation."[98] In contrast, Nurakhmet believes that the legal system of Kazakhstan is influenced by the traditions of both Islamic law and Roman law.[99] In addition to the three-tier court system (district and city, appeal and supreme courts), the European Bank for Reconstruction and Development (EBRD) observes that specialized courts have been established, such as economic and administrative courts and a specialized financial court.[100] For instance, the Special Financial Court of Almaty has the authority to resolve issues related to "participants" in the Almaty Regional Financial Center, specifically businesses with a permanent presence in Almaty and the appropriate licenses.[101] This was arguably an early experiment of the AIFC and its court.

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92 Hamzeh, *supra* note 87, at 79. The Adlia court was established in 1971 along with the independence of the country, long before 2005, the year of establishment of QFC.

93 Uddin, *supra* note 85, at 83.

94 Const. of the Republic of Kazakhstan June 9, 2021, § 1, art. 1(1) (Kaz.).

95 *Kazakhstan: People and Society*, WORLD FACTBOOK, https://www.cia.gov/the-world-factbook/countries/kazakhstan/#people-and-society (last visited Jan. 29, 2025); *see also United Arab Emirates: People and Society*, WORLD FACTBOOK, https://www.cia.gov/the-world-factbook/countries/united-arab-emirates/#people-and-society (last visited Jan. 29, 2025); *Qatar: People and Society*, WORLD FACTBOOK, https://www.cia.gov/the-world-factbook/countries/qatar/ (last visited Jan. 29, 2025).

96 *See generally* SVANTE CORNELL ET AL., RELIGION AND THE SECULAR STATE IN KAZAKHSTAN (2018), https://silkroadstudies.org/resources/pdf/silkroadpapers/2018-04-kazakhstan-secularism.pdf.

97 *The World's Muslims: Religion, Politics and Society*, PEW RSCH. CTR. (Apr. 30, 2013), https://www.pewresearch.org/religion/2013/04/30/the-worlds-muslims-religion-politics-society-overview/.

98 *Kazakhstan: Government*, WORLD FACTBOOK, https://www.cia.gov/the-world-factbook/countries/kazakhstan/#government (last visited Feb. 5, 2025).

99 Anuar A. Nurakhmet, *Laws of the Republic of Kazakhstan – Web Based Resources*, GLOBALEX (July & Aug. 2019), https://www.nyulawglobal.org/globalex/Kazakhstan1.html.

100 *See Business Reorganisation Assessment*, EUR. BANK FOR RECONSTRUCTION AND DEV. 1, 3 (2022), https://ebrd-restructuring.com/storage/uploads/documents/13472%20ebrd%20(kazakhstan%20country%20profile%20artwork).pdf.

101 *Id.*

In addition to a separate court system, the zones have their own rules and regulations in various civil and commercial areas.[102] Therefore, there is a need to look at their national counterparts to justify why a dedicated separate set of rules is required in the zones to facilitate business. Considering that it is virtually impossible to examine all civil and commercial laws of the UAE, Qatar, and Kazakhstan using the limited space here, a convenient way to do so will be by referring to the World Bank's Doing Business report.[103] This project provided objective measures of business regulations and their enforcement across 190 economies and selected cities at the subnational and regional levels. The first Doing Business report, first published in 2003, covered five indicator sets and 133 economies.[104] The most recent report in 2020 covered eleven indicator sets and 190 economies.[105] Economies were ranked on their ease of doing business, from 1 to 190th.[106] A high ease of doing business ranking means the regulatory environment is more conducive to the starting and operation of a local company.

According to the World Bank ranking, the UAE, Qatar, and Kazakhstan were ranked 16th, 77th and 25th, respectively.[107] As a comparison, the U.S. and UK, where the two leading financial centers in the world, New York and London, are located, were ranked 6th and 8th, respectively.[108] On the face of it, there is still room for the three countries to learn from the Anglo-American system. However, if one truly believes in the robustness of the ranking, the regulatory gap is not vast, except for Qatar. Further, these countries are indeed world-leading in certain important aspects of doing business. For example, the UAE has been ranked first and second in getting electricity and paying taxes, respectively.[109] Kazakhstan has been ranked

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[102] *See, e.g.*, *Laws & Regulations*, *supra* note 5; *Laws and Regulations*, QFC, https://www.qfc.qa/en/laws-and-regulations (last visited Jan. 31, 2025).

[103] *Doing Business 2004-2020*, WORLD BANK GRP: DOING BUS. ARCHIVE, https://archive.doingbusiness.org/en/doingbusiness (last visited Feb. 10, 2025) (noting that after data irregularities on Doing Business 2018 and 2020 were reported internally in June 2020, World Bank indefinitely paused any future Doing Business reports, and the last report was Doing Business 2020).

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Doing Business 2004-2020*, *supra* note 103.

[108] *Id.*

[109] "Getting Electricity" measures all procedures required for a business to obtain a permanent electricity connection and supply for a standardised warehouse; *see Getting Electricity*, WORLD BANK GRP.: SUBSTANTIAL STUD. MEASURING BUS. REGULS., https://subnational.doingbusiness.org/en/data/exploretopics/getting-electricity/what-measured (last visited Feb. 10, 2025). "Paying Taxes" measures the taxes and mandatory contributions that a medium-sized company must pay in a given year as well as measures of the administrative burden of paying taxes and contributions and complying with postfiling procedures; *see Paying Taxes*, WORLD BANK GRP.: SUBSTANTIAL STUD. MEASURING BUS. REGULS., https://subnational.doingbusiness.org/en/data/exploretopics/paying-taxes/what-measured (last visited Feb. 10, 2025).

first and fourth in protecting minority investors and enforcing contracts, respectively.[110]

In a nutshell, for a summary of the key features of their national legal systems and business environment, please refer to Table 3.[111] The availability of *Adlia* route in Qatar and a specialist financial law court in Almaty, Kazakhstan apparently provided the early foundation and recognition for the need of non-religious and specialization of civil and commercial regulation.

V. SUBSTANTIVE REGULATIONS – A GENERAL PERSPECTIVE

As explained before, in addition to dedicated administrative and regulatory authorities, the core feature of the four zones is their independent bespoke set of civil and commercial regulations and common law court systems. This section will focus on the former before moving on to look at the court systems later in this article.

The DIFC has twenty-nine main regulations, covering various important areas of civil and commercial law, independent of their national framework.[112] Although it is understood that the four zones seek to mirror or (adaptively) transplant from an English system, it is worth noting that English contract law is largely common-law-based, yet the DIFC has a comprehensive code of contract law.[113] The view is that, as opposed to the law in the UK, their contract law has been modeled on the UNIDROIT Principles of International Contracts.[114] In contrast, the

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110 "Protecting Minority Investors" measures the protection of minority investors from conflicts of interest through various indicators, based on the strength of securities regulations, company laws, civil procedure codes and court rules of evidence; *see Protecting Minority Investors methodology*, WORLD BANK GRP.: DOING BUS. ARCHIVE, https://archive.doingbusiness.org/en/methodology/protecting-minority-investors (last visited Feb. 10, 2025). "Enforcing Contracts" measures the time and cost for resolving a commercial dispute through a local first-instance court and the quality of judicial processes index; *see Enforcing Contracts*, WORLD BANK GRP.: SUBSTANTIAL STUD. MEASURING BUS. REGULS., https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/what-measured#:~:text=the%20enforcing%20contracts%20indicator%20measured,efficiency%20in%20the%20court%20system (last visited Feb. 10, 2025).

111 *See infra* Table 3.

112 These include, for example, Arbitration Law DIFC Law No. 1 of 2008, Companies Law No. 5 of 2018, Contract Law DIFC Law No. 6 of 2004, Employment Law, DIFC Law No. 2 of 2019, Insolvency Law, DIFC Law No.1 of 2019, Law of Security DIFC Law No. 8 of 2005, Real Property Law No. 10 of 2018, Trust Law, DIFC Law No. 4. of 2018, among others. *DIFC Legal Database*, DIFC, https://www.difc.ae/business/laws-and-regulations/legal-database (last visited Jan. 31, 2025).

113 *See generally* Contract Law DIFC Law No. 6 of 2004 (U.A.E.); *see* Aubrey Diamond, *Codification of the Law of Contract*, 31 MOD. L. REV. 361, 361 (1968); Andrew Tettenborn, *Codifying Contracts—An Idea Whose Time has Come?* 67 CURRENT LEGAL PROBS. 273, 273 (2014) (discussing the need of codification of English contract law).

114 *CA 005/2022 CA 006/2022 The Industrial Group Limited v Mr Abdelazim EL Shikh EL Fadil Hamid*, DIFC CTS. (Nov. 30, 2022), https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/ca-0052022-ca-0062022-industrial-group-limited-

QFC has twenty main regulations.[115] The examples of regulations that are on the list of DIFC, but not that of the QFC, include intellectual property law and property law (conversely, the DIFC does not have tax and immigration regulations, but the QFC does).[116] As for the ADGM, it claims to be the first jurisdiction in the Middle East to "directly apply common law."[117] Consistent with this approach, the ADGM has a shorter list of regulations (comprising eighteen).[118] A notable regulation is the Application of English Law Regulations, which on the one hand stipulates that "the common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law" of the ADGM.[119] On the other hand, certain Acts in England "shall apply and have legal force in, and form part of the law of the ADGM," and as a result, the ADGM does not need to reproduce (no matter whether adaptively or wholesale) and re-enact that specific area of the law.[120] The Schedule of Applicable Statutes is contained in the Regulations, and there are over forty English statutes such as the Bills of Exchange Act 1882, Partnership Act 1890, Sale of Goods Act 1979, Trustee Act 2000, and so on.[121] Some of these statutes apply in full, whilst the rest require modifications as stated in the Schedule.[122] The list of eighteen main ADGM regulations still contains some regulations in key areas like company law, data protection, insolvency, real property, and so on, whereas the English counterparts

v-mr-abdelazim-el-shikh-el-fadil-hamid; Ilias Bantekas, *Transpanting the Unidroit Contract Principles into the Qatar Financial Center: A Fresh Paradigm for Wholesale Legal Transplants?,* 26 UNIF. L. REV. 248 (2021) (noting the DIFC Contract Law is based on the UNIDROIT Principles of International Contracts, not the English common law. It is believed that the same can be said for the QFC).

115 *See generally QFC Regulations*, QATAR FIN. CTR. REGUL. AUTH., https://qfcra-en.thomsonreuters.com/rulebook/qfc-regulations (last visited Jan. 31, 2025).

116 By the authors' own comparison of the regulation lists in DIFC and QFC at the time of writing, as of July 2024.

117 As featured prominently on their website. *See English Common Law*, ADGM, https://www.adgm.com/adgm-courts/english-common-law#:~:text=those%20regulations%20make%20english%20common,also%20made%20applicable%20in%20adgm (last visited Mar. 17, 2025).

118 *See Regulations*, ADGM, https://en.adgm.thomsonreuters.com/rulebook/regulations-0 (last visited Jan. 31, 2025).

119 Application of English Law Regulations, § 1(1) (2015) (ADGM).

120 *Id.* § 2(1).

121 Application of English Law Regulations, Schedule of Applicable Statutes (2015) (ADGM).

122 For example, in the Schedule, for the UK's Sale of Goods Act 1979, "The whole Act, other than sections 1, 15B, 22, 53A, 56, 58, and 63, and Schedules 1, 2, 3 and 4, which shall be omitted, and subject to [further modifications as stated in the Schedule]…" *See* Application of English Law Regulations, Schedule of Applicable Statutes (2015) (ADGM).

do not apply directly.[123] Meanwhile, the AIFC has twenty-three main regulations.[124] Its list broadly resembles the lists of the DIFC and QFC. Compared with the DIFC for example, the AIFC also has a personal property law but does not have a real property law.[125]

In addition to a dedicated legal framework, there are also some incentives (both financial and non-financial) to attract businesses and participants to the zones, especially in relation to taxation and immigration policy. Normally, these can be in the form of a preferential tax regime and/or a simplified visa regime. In the DIFC, a fifty-year guarantee of zero taxes on corporate profits and their employees' income is provided.[126] However, it is only attractive to certain companies when compared to the rest of Dubai and the UAE, where presently, corporate income tax is only chargeable for oil companies and foreign banks, and there is no personal income tax.[127] The same analysis can also be applied to the ADGM, which has operated a zero-taxation regime for fifty years in relation to profits and income tax.[128] As a side note, it is worth noting that the UAE was once regarded as a tax haven by the European Union.[129] Similarly, in the AIFC, there is a fifty-year waiver for corporate tax, individual income tax, property tax, and land tax, till the end of year 2066.[130] As a comparison, the normal corporate tax and personal income tax rates in Kazakhstan are twenty percent (20%) and ten percent (10%), respectively.[131] Amongst the four zones, the QFC is perhaps the only one that levies taxes on corporate profits.[132] The same standard rate of corporation tax of ten percent (10%) is applied nationally, both within and outside of the QFC, for a

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123 Companies Regulations 2015, Data Protection Regulations 2015, Insolvency Regulations 2015, and Real Property Regulations 2015; and their English counterparts are apparently the Companies Act 2006, Data Protection Act 2018, Insolvency Act 1979, and Law of Property Act 1925. *See ADGM Legal Framework*, ADGM, https://en.adgm.thomsonreuters.com/rulebook/commercial-legislation (last visited Mar. 17, 2025).

124 *See Legal Framework*, *supra* note 74.

125 By the authors' own comparison of the regulation lists in the financial zones at the time of writing, as of July 2024.

126 Dubai Law No. 9 of 2004, art. 14 (U.A.E.).

127 *Taxation*, U.A.E., https://u.ae/en/information-and-services/finance-and-investment/taxation#:~:text=the%20uae%20does%20not%20levy,borne%20by%20the%20end%20consumer. (last visited Jan. 31, 2025).

128 Abu Dhabi Law No. 4 of 2013, art. 18 (U.A.E).

129 *EU list of non-cooperative jurisdictions for tax purposes*, EUR. COUNCIL (June 19, 2023), https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/ (noting the country was removed from the list by the EU in October 2019).

130 CONST. OF THE AIFC, art. 6.

131 *Kazakhstan Personal Income Tax Rate*, TRADING ECONOMICS, https://tradingeconomics.com/kazakhstan/personal-income-tax-rate (last visited Mar. 17, 2025).

132 *Tax*, QFC, https://www.qfc.qa/en/operating-with-qfc/tax (last visited Mar. 17, 2025).

corporate entity that is wholly or partially foreign-owned.[133] There is no personal income tax in Qatar.[134]

As for non-financial incentives, for the AIFC, citizens of countries of the OECD, Malaysia, the UAE, Singapore, and Monaco, as well as a few other countries enjoy visa-free entry to Kazakhstan for a period of thirty days.[135] The QFC is certainly the only zone that goes far enough to have dedicated immigration regulations. In the rest of Qatar, foreign companies registered with the Ministry of Economy and Commerce must obtain special approval from the Ministry of Labour to hire foreign workers. In contrast, companies registered with the QFC are exempt from this requirement. In the view of Jankovic, the QFC regime will benefit from having a dedicated Immigration Office[136] at the QFC site, along with simplified procedures for visa applications.[137] As for the DIFC and ADGM, the national visa and immigration policies and procedures are applicable. So, there is no obvious advantage in this regard.

In addition to an independent legal system, which is essentially English, tax incentives and seemingly more friendly immigration policies, other selling points of the zones include fewer restrictions on foreign ownership and capital flow. One of the key advantages of establishment in one of the UAE free zones is the right to 100 percent foreign ownership.[138] Tight foreign ownership restrictions were previously in place in the UAE. Earlier on, any company established in the UAE must have a UAE national shareholder holding at least fifty-one percent of the capital.[139] However, the UAE Commercial Companies Law 2015 was amended in 2020 to accommodate full foreign ownership of over 1,000 commercial and industrial activities.[140] Further, the UAE has no foreign exchange controls and no restrictions or levies on the repatriation of capital and profits by foreign investors

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133 QFC TAX REGULS. art. 9 (Qatar). No corporate income tax is levied on a corporate entity that is wholly owned by Qatari nationals and GCC nationals. Like the UAE, a rate of 35 percent is levied on oil and gas companies. *Qatar's Tax System*, HUKOOMI QATAR E-GOV'T (Jan. 12, 2023), https://hukoomi.gov.qa/en/articles/qatars-tax-system.

134 *Id.*

135 CONST. OF THE AIFC, art. 7.

136 QFC IMMIGR. REGULS. arts. 6–7 (Qatar).

137 Vladimir Jankovic, *Qatar Jurisdictions from an Immigration Perspective*, LEXOLOGY (June 5, 2018), https://www.lexology.com/library/detail.aspx?g=efddfe56-f94b-47f3-9c24-40cffb8e506d.

138 *Establish a Business.*, DIFC, https://www.difc.ae/business/starting-business/ (last visited Jan. 31, 2025).

139 Federal Law No. 2 of 2015 on Commercial Companies [UAE Comm. Comp. Law] art. 10 (U.A.E). Companies in the DIFC and ADGM are incorporated under the zones' respective companies' regulations as opposed to the UAE company law; thus, the restriction does not apply, and the zones' respective companies regulations do not contain such restriction. Indeed, Article 5 of the UAE Commercial Companies Law stipulates that the law as a whole does not apply to companies established in the financial free zones.

140 *Full foreign ownership of commercial companies*, U.A.E. (July 4, 2024), https://u.ae/en/information-and-services/business/doing-business-on-the-mainland/full-foreign-ownership-of-commercial-companies.

outside the country.[141] There is no special advantage to operating in either the DIFC or ADGM in this regard.

Quite like the UAE, the Qatari Foreign Investment Law[142] only allowed foreign investors to invest in all sectors up to a maximum of fourty-nine percent in the equity of Qatari companies. In 2018, the Ministry of Economy and Commerce announced a draft law that would allow foreign investors to own 100 percent of equity.[143] Under this draft law, the then restriction on foreign ownership would be removed, except for listed companies and financial institutions. This new Foreign Investment Law was approved in January 2019, repealing the former law of 2000.[144] Within the QFC, it is made clear that any restrictions, contained in the laws, such as the Foreign Investment Law of 2000, shall not apply.[145] Furthermore, although the QFC takes pride in allowing "100 percent foreign ownership, 100 percent repatriation of profits," this is not really a concern in Qatar when the country, like the UAE, has been made more open to foreign investors. Qatar does not generally have any foreign exchange controls or restrictions on the remittance of funds.[146] As a result, foreign investors are free to transfer profits and capital into and out of the country.

As for Kazakhstan, Deloitte observes that the Kazakhstani Constitution affords foreign companies and individuals the same rights and obligations as Kazakhstan nationals.[147] Foreigners may invest in almost all sectors of the economy, but restrictions do exist for specific industries.[148] Ownership restrictions include telecommunications lines operators (up to 49%), media companies (up to 20%), and airlines (up to 49%). It seems there is no obvious advantage in operating in the AIFC in this regard. Firstly, the restriction applies to a few specialized industries only, and secondly, it is dubious for these industries if the restriction can really be bypassed.[149] Furthermore, national reforms introduced since 1992 have largely

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141 *Doing Business in the United Arab Emirates*, BAKER MCKENZIE 1, 5 (2024), https://www.bakermckenzie.com/-/media/files/insight/guides/2024/doing-business-in-the-uae-2024.pdf.

142 Law No. 13 of 2000 Regulation of the Investment of Non-Qatari Capital in the Economic Activity 13 / 2000 [Qatari Law No. 13 of 2000] art. 2 (Qatar).

143 *New law regulating foreign investment allows up to 100 percent foreign ownership*, UN TRADE & DEV. (Jan. 7, 2019), https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3360/new-law-regulating-foreign-investment-allows-up-to-100-percent-foreign-ownership.

144 Law No. 1 of 2019 On Regulating Non-Qatari Capital Investment in the Economic Activity [Qatari Law No. 1 of 2019] (Qatar).

145 QFC Companies Regulations [QFC Comp. Regs.] art. 2 (Qatar).

146 *Doing Business in the United Arab Emirates*, *supra* note 141, at 11.

147 *Doing Business in Kazakhstan 2016: Reach, relevance and reliability*, DELOITTE 1, 3 (2016), https://www2.deloitte.com/content/dam/deloitte/kz/documents/about-deloitte-kz/doing%20business%20in%20kz_2016.pdf.

148 *Id.*

149 For example, the National Security Law of Kazakhstan limits telecommunication opportunities by not allowing foreign individuals or companies to manage or operate trunk communication lines or own more than 49 percent of shares in long-distance or international

liberalized foreign trade and eased capital transfer and exchange controls.[150] Again, the AIFC offers no special treatment in this regard.

In a nutshell, a dedicated regulatory framework (including written rules, regulators, and court system) is the major benefit offered by the zones. On the other hand, in relation to other aspects, the zones are operating a seemingly more liberal regime. However, this competitive advantage has gradually faded out as more and more national reforms have been introduced to create a nationwide business environment that is more (foreign) investor-friendly.[151] For example, the zones arguably were capable of providing a legitimate way to bypass foreign ownership restrictions in companies (especially in the cases of the UAE and Qatar).[152] However, recently, such restrictions have indeed been largely relaxed in the two countries.[153] Also, as explained above, some of the zones' benefits (as advertised by them) are indeed nationwide, not only available to participants and businesses in the zones, such as a zero- or low-tax rate (except for the AIFC). For a quick summary of the benefits offered by the zones, see Table 4.[154]

VI. SUBSTANTIVE REGULATIONS – A SPECIFIC PERSPECTIVE THROUGH THE LENSE OF COMPANY LAW

Considering that each zone has its own comprehensive set of civil and commercial laws, it is almost impossible to examine every single one of these laws, given the limited space of this article. This section will therefore use company law as an example to demonstrate the potential differences between the zones' national and English approaches in various aspects of regulation. Company law is important because it performs two important functions.[155] First, it establishes the structure of corporate form as well as ancillary housekeeping rules necessary to support this structure; second, it attempts to control conflicts of interest among corporate constituencies, including but not limited to shareholders, directors, creditors, employees, consumers, members of the public, and so on. The three areas of

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communications operators owning land communication lines. The National Security Law is a branch of public law and clearly applies to the AIFC.

150 *Doing Business in Kazakhstan*, BAKER MCKENZIE (2024), https://www.bakermckenzie.com/en/insight/publications/guides/doing-business-kazakhstan.

151 *See, e.g.,* explanation *supra* note 139 and accompanying text.

152 As discussed above, for example, the Qatari Foreign Investment Law used to allow foreign ownership up to a maximum of 49 percent in Qatari companies. *See New Law Regulating Foreign Investment Allows up to 100 Percent Foreign Ownership*, UNCTAD (Jan. 7, 2019), https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3360/new-law-regulating-foreign-investment-allows-up-to-100-percent-foreign-ownership.

153 As discussed above, *see* the relaxation introduced by the UAE Commercial Companies Law 2015 as amended and the Qatari Foreign Investment Law as amended. *See id.*; UAE Comm. Comp. Law art. 10, before its amendment in 2020.

154 *See infra* Table 4.

155 REINIER KRAAKMAN ET AL., THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH 22 (Oxford Univ. Press, 3d ed. 2017).

company law to be considered are: (1) availability of business forms; (2) director duties; and (3) shareholder remedies.

A. Availability of Business Forms

In the case of the U.A.E., there are a few types of business associations available.[156] The common types are Limited Liability Company, Private Joint Stock Company, and Public Joint Stock Company. Only the first type cannot offer shares to the public and thus is "private" in a U.K. sense.[157] There is no minimum capital requirement for a Limited Liability Company, but there is a restriction on the number of shareholders to fifty.[158] Both Private Joint Stock Companies and Public Joint Stock Companies have high minimum capital requirements of AED 5 million (over USD 1.3 million) and AED 30 million (over USD 8 million), respectively.[159] The U.A.E. Commercial Companies Law does not apply to companies established in the financial free zones (i.e. the DIFC and the ADGM).[160] Therefore, the business forms available there may be somewhat different. In the DIFC, there are two major types of companies: private and public. Private companies are prohibited from making a public offer of shares and can have no more than fifty shareholders.[161] Private companies have no minimum capital requirement, whereas a public company shall have a minimum capital of USD 100,000, clearly a much lower amount than its national counterpart.[162] Similarly, in the ADGM, private companies cannot make a public offer and do not have a minimum capital requirement.[163] Public companies there have an even lower requirement when compared to the DIFC, which has a required minimum capital amount of USD 50,000.[164] In addition, there may be two more advantages to establishing in the zones—first, as explained above, the zones allow full foreign ownership in companies, although the benefit arguably has had diminished importance following the relaxation of foreign ownership restrictions.[165] Furthermore, both the DIFC and ADGM have explicitly

156 UAE Comm. Comp. Law art. 9.

157 Despite its name containing the word "Private," the Emirates Securities and Commodities Authority Board of Directors Decree No. 10 of 2014 Concerning the Regulation of Listing and Trading of Shares of Private Joint Stock, provides the conditions under which Private Joint Stock Companies would be able to list their shares on the stock market.

158 UAE Comm. Comp. Law art. 71.

159 *Id.* at arts. 193, 256.

160 UAE Comm. Comp. Law art. 5.

161 DIFC Companies Law No. 5 of 2018 [DIFC Comp. Law] arts. 27, 42 (U.A.E.).

162 *Id.* at art. 35.

163 ADGM Companies Regulations [ADGM Comp. Regs. 2015] art. 693 (2015) (U.A.E.).

164 *Id.* at art. 701.

165 *See* Part IV.

introduced the partnership forms available in the U.K. in their zones, when their national existence (bar LLP) is apparently integrated into the company law.[166]

Similarly, in Qatar, the regulation of both partnerships and companies is dealt with together under the Qatari Commercial Companies Law.[167] According to the Ministry of Commerce and Industry, General Partnership Company and Simple Partnership Company are available.[168] The former is akin to a general partnership in the U.K., in which the partners assume joint responsibility for the partnership's obligations.[169] The latter is akin to a limited partnership in the U.K., in which there are "sleeping" partners who have contributed capital but shall be liable only to the extent of their capital contribution. Limited Liability Partnership is available in the QFC but not nationwide.[170] In Qatar, public shareholding companies require special approval from the Ministry and a minimum capital amount of QAR 10 million (more than USD 2.5 million).[171] Private companies exist in the form of private shareholding companies and limited liability companies. The former cannot offer its shares for public subscription and the company's capital shall not be less than QAR 2 million (over USD 500,000).[172] Further, there is no restriction on the maximum number of shareholders.[173] The latter has no minimum capital requirement, but the number of shareholders cannot exceed fifty (quite like its U.A.E. counterpart).[174] As for the QFC, it has ditched the distinction between private and public companies. They are collectively known as Limited Liability Companies.[175] There is no minimum capital requirement, and they can be listed on a stock exchange.[176] Also, in addition to Limited Liability Partnerships, as already

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166 *See* General Partnership Law - DIFC Law No.11 of 2004 [DIFC Law No. 11 of 2004] (U.A.E.); Limited Partnership Law - DIFC Law No. 4 of 2006 [No.4 2006]; Limited Liability Partnership Law - DIFC Law No. 5 of 2004 [DIFC Law No. 5 of 2004]; the corresponding U.K. statues seem to be: Partnership Act 1890, 53 & 54 Vict. c. 39; Limited Partnership Act 1907, 7 Edw. c. 24; Limited Liability Partnership Act 2000, c. 12. It is worth noting that the ADGM has its own Limited Liability Partnership Regulations to govern the use of the Limited Liability Partnerships. For general and limited partnerships, it applies the U.K. statutes through the force of the Application of English Law Regulations 2015. The concept of "Joint Liability Company," as in Article 39 of the U.A.E. Commercial Companies Law, seems to correspond to general partnership, but it requires incorporation and registration (Article 43), whereas the U.K. counterpart does not. Similarly, the concept of Simple Commandite Company may correspond to a limited partnership.

167 Law No. 11 of 2015 [Qatari Law No. 11 of 2015] (Qatari).

168 *Companies Type*, MINISTRY OF COM. & INDUS., https://www.moci.gov.qa/en/our-services/investor/companies-type/ (last visited Oct. 2, 2024).

169 Partnership Act 1890, 53 & 54 Vict. c. 39.

170 Limited Liability Partnerships Regulations [QFC LLPR] art. 6 (2005) (Qatar).

171 Qatari Law No. 11 of 2015, arts. 65–66.

172 *Id.* at art. 205.

173 *Companies Type*, *supra* note 168.

174 *Id.*

175 QFC Comp. Regs. part 3 (2005).

176 *Id.*

mentioned, both general partnerships and limited partnerships are available in the QFC.[177]

As for Kazakhstan, the main business forms are limited liability partnerships and joint stock companies. For the former, the initial capital may not be less than one-hundred times the monthly calculation index,[178] roughly over USD 700.[179] For the latter, the minimum authorized capital of the company is fifty-thousand times the monthly calculation index (close to USD 400,000) and is therefore only suitable for larger businesses.[180] A public company is a type of joint stock company that may make a public offering of its shares in the securities market.[181] Furthermore, general partnerships and limited partnerships are available but not to foreigners.[182] The availability of business forms is broadly similar in the AIFC.[183] One notable difference is that the minimum capital amount (for public companies only) is denominated in U.S. dollars (USD 100,000).[184]

For the four zones, the availability of business forms is not very different from that of the U.K.; the three forms of partnership are available. This is important when the partnership forms may not exist or may not be well developed in the national frameworks. The corporate form is available too. One observation is that the zones generally impose a lower bar in terms of capital requirement for public companies than the national requirement, and even that of the U.K. (for the ADGM and QFC).[185] Further, it can be said that the QFC has not quite followed the U.K. model, in the sense that there is no distinction between public and private companies. Also, general partnerships and limited partnerships are governed by one single regulation (something proposed but finally not going ahead in the U.K.). Indeed,

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177 Partnership Regulations 2007 [QFC Part. Regs.] (Qatar). Unlike the U.K., there is no dedicated legislation for limited partnerships. But note, there was once a plan to repeal and replace the Limited Partnership Act 1907 in the U.K. in 2008. In that year, the Department for Business, Enterprise and Regulatory Reform published a Consultation Document containing a draft Legislative Reform Order to repeal and replace the Act. The draft Legislative Reform Order proposed the 1907 to be merged into the Partnership Act 1890. Elspeth Berry, *Death by a Thousand Cuts or Storm in a Teacup? The Reform of Limited Partnership Law*, J. BUS. L. 578, 579, 581 (2011).

178 As of 2023, each unit is equivalent to KZT 3,450. *See Minimum calculated indexes,* E.GOV, https://egov.kz/cms/en/articles/article_mci_2012 (last updated Dec. 31, 2024).

179 Law of the Republic of Kazakhstan No. 220-1 [Kaz. No. 220] art. 23 (Apr. 22, 1998). For small businesses, there can be no minimum capital amount.

180 Law of the Republic of Kazakhstan No. 415 on Joint Stock Companies [Kaz. No. 415] art. 10 (May. 13, 2003).

181 *Id.* at art. 4.

182 CIV. CODE OF THE REPUBLIC OF KAZAKHSTAN [KAZ. CIV. CODE] art. 58 (1994).

183 AIFC Companies Regulations [AIFC Comp. Regs.] (Kaz.); AIFC General Partnership Regulations [AIFC Gen. Part. Reg.] (Kaz.); AIFC Limited Partnership Regulations [AIFC Lim. Part. Reg.] (Kaz.); AIFC Limited Liability Partnership Regulations [AIFC Lim Lia. Part. Reg.] (Kaz.).

184 *Id.* at art. 43.

185 Comparatively, in the U.K., the amount is GBP 50,000. Companies Act 2006, c. 46, § 763 (U.K.).

there is evidence that the zones are evolving rapidly and getting ahead of the U.K. For example, all zones have dedicated treatment for cell companies.[186]

For a summary of the discussion in this part, see Table 5.[187]

B. Director Duties

In addition to fulfilling the function of providing business forms, as explained above, company law also has the function of controlling the conflicts of interest between various constituencies within a company. There are three generic agency problems that can arise in companies.[188] The first type involves the classic agency problem identified by Adam Smith.[189] The problem lies in assuring that the managers are responsive to the shareholders' interests rather than pursuing their own personal interests. The second agency problem involves the conflict between majority and minority shareholders. The former generally tends to expropriate the latter.[190] The third problem lies in assuring that corporate insiders do not behave opportunistically toward outsiders such as creditors, workers, and consumers. There are different legal strategies to mitigate these three agency problems.[191] The rules strategy, for example, requires or prohibits specific behaviors.[192] Here, we will use director duties as an illustration to see how the zones have introduced regulation in the same manner or differently.

In the DIFC, the set of director duties as provided in Articles 69 to 75 of the DIFC Companies Law, mirroring (almost verbatim) the seven duties as provided in the Companies Act 2006 of the U.K.[193] Similarly, the same seven duties are found in the ADGM Companies Regulation and the AIFC Companies Regulations.[194] In contrast, the QFC has a unique approach. The set of only five duties is provided in Article 55 of the QFC Companies Regulations.[195] The first provides a general standard of duty of honesty and good faith; the second largely corresponds to the

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186 DIFC Investment Cell Company Regulations [DIFC Cell Regs.] (2019) (U.A.E.); DIFC Protected Cell Company Regulations [DIFC PCC] (2018) (U.A.E); ADGM Comp. Regs. part 36 (U.A.E.); QFC Comp. Regs. part 4; AIFC Companies Rules [AIFC Comp. Rules] part 8 (Kaz.). A protected cell company is regarded as a standard limited company in the U.K. that has been separated into legally distinct portions, i.e. cells. Such arrangements are often used in relation to captive insurance. *See, e.g.*, HMRC International Manual INTM236500 (U.K.).

187 *See infra* Table 5.

188 KRAAKMAN, *supra* note 155, at 29–30.

189 Adam Smith, in his book, famously said, "The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own." *See* ADAM SMITH, WEALTH OF NATIONS 606–07 (1776).

190 KRAAKMAN, *supra* note 155, at 29–30.

191 *Id.* at 31–32.

192 *Id.* at 32.

193 Companies Act 2006, c. 4, §§ 171–77 (U.K.).

194 ADGM Comp. Regs. 2015, arts. 161–67; AIFC Comp. Regs. 2017, arts. 77–83.

195 QFC Comp. Regs. art. 55.

exercise of independent judgment as in Section 173 of the U.K. Companies Act; the third mirrors the duty of care, skills, and diligence as in Section 174 of the U.K. Act by providing a dual subjective and objective test;[196] the fourth corresponds to the corporate opportunity doctrine as set out in Section 175 of the U.K. Act;[197] and the fifth is the duty of not accepting third party benefits (essentially Section 176 of the U.K. Act).[198] In other words, Sections 171 and 172 of the U.K. Act have not been adopted by the QFC. This clearly sets the QFC apart from the other three zones in the sense that the QFC has undertaken a more selective approach to transplanting English law. At the same time, it may make logical sense considering that the "proper purpose rule" remains far from crystal clear despite a Supreme Court attempt to provide an authoritative interpretation.[199] Secondly, the enlightened shareholder value approach is quite controversial and has been considered and rejected by even other common law jurisdictions.[200]

Next, it is important to compare the zones' rules in this regard relative to their national frameworks to reveal the possible differences. In the U.A.E., the duties of directors as provided in the law are quite brief.[201] As for Qatar, Slawotsky and Truby believe that the Qatari company law provides two independent duties for directors: duties of loyalty and due care.[202] In relation to the former, the law prohibits directors from engaging in conduct that raises questions regarding loyalty such as participating in competing businesses, engaging in self-interested transactions, obtaining cash loans from the company, or exploiting insider information.[203] As for the latter, the law provides that the directors are jointly responsible for managerial mistakes.[204] Slawotsky and Truby criticize that the duty

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196 This duty, like its U.K. counterpart, contains wordings like "reasonably prudent person" and "a director in his position and any additional knowledge, skill and experience which he has." *Id.*

197 *Id.* at art. 55(2)(D) ("[A Director shall] not use for his own or anyone else's benefit any property or information of the LLC or any opportunity of the LLC of which he become aware in the performance of his functions as a director.").

198 *Id.* at art. 55(2)(E) ("[A Director shall] not accept any benefit from a third party which is conferred because of his position as a director or by reason of his doing or not doing anything as a director, unless the benefit is incidental to the proper performance of his functions as a director or there is no real possibility of the benefit resulting in a conflict of interest on the part of the director.") (The wordings of the U.K. counterpart section are broadly similar).

199 *See* Eclairs Group Limited v. JKX Oil & Gas plc [2015] UKSC 71.

200 For the case of Australia, see, e.g., Andrew Keay, *Tackling the Issue of the Corporate Objective: An Analysis of the United Kingdom's 'Enlightened Shareholder Value Approach'*, 29 SYDNEY L. REV. 577, 579 (2007). For Hong Kong, see ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 186 (2019).

201 U.A.E. Comm. Comp. Law art. 22. The full section reads, "A person authorized to manage the company shall preserve its rights and extend such care as a diligent person. Such person shall do all such acts in agreement with the objective of the company and the powers granted to such person by virtue of an authorization issued by the company in this respect."

202 Joel Slawotsky & Jon Truby, *The Director Duty of Care in Qatar*, 26 DUKE J. COMPAR. & INT'L L. 337, 361 (2016).

203 Qatari Law No. 11 of 2015, arts. 108–111.

204 *Id.* at art. 113.

of care in Qatar is rather "open-ended and undefined."[205] In Kazakhstan, director duties are provided in Article 62 of the Kazakh Company Law.[206] There is a list of seven duties (though nothing like its U.K. counterpart). According to Dragneva, the law of Kazakhstan managed to contain in the legislation some general standards for the discharge of director duties.[207] However, as criticized by Dentons, despite a list of seven duties, the concept of fiduciary duties is still not a single integral set of norms of Kazakhstan legislation.[208] In particular, the company law lacks some important aspects of the duty of loyalty; it does not establish the duty of care and does not impose the burden of proof on the directors and officers.[209]

In a nutshell, by mirroring the English statute and adopting a common law regime, the zones are capable of providing a more comprehensive, much-tested set of director duties. Also, it is noted that Qatar has selectively adopted the English position on director duties, as opposed to a rather wholesale approach adopted by the other three zones. For a quick summary of this discussion, see Table 6.[210]

C. Shareholder Remedies

A list of director duties as found in corporate regulation, which prescribes acceptable behaviors or prohibits specific behaviors, serves as an *ex ante* deterrence to wrongdoing.[211] However, the *ex post* deterrence will need to come from adjudicators who will determine whether violations have actually occurred. To ensure there is a credible threat of enforcement and sanctions, the potential wrongdoers should be readily taken to court. Since the director's duties are in principle owed to the company only as opposed to individual shareholders, the company itself is the competent party that can initiate legal action against the directors.[212] This is a prominent rule in the field of company law known as the *Foss v. Harbottle*[213] rule. However, very often the corporate decision to sue or not will be made by the same directors who have allegedly breached their duties.[214] To ensure that the corporate governance problems can be addressed by litigations, English law allows exceptions to the *Foss v. Harbottle* rule. One example is the derivation action, which can be used to address situations where the right or cause

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205 Slawotsky & Truby, *supra* note 202, at 371.

206 Kazakh Company Law, art. 62.

207 RILKA DRAGNEVA, *Legal Regulation of Shareholder Rights in the CIS*, *in* INVESTOR PROTECTION IN THE CIS: LEGAL REFORM 46, 81 (2007).

208 *Kazakhstan business updates*, DENTONS (Dec. 7, 2015), https://www.lexology.com/library/detail.aspx?g=fbe7ff1b-5e5d-4592-83fe-bf440a06ee50.

209 *Id.*

210 *See infra* Table 6.

211 KRAAKMAN, *supra* note 155, at 32.

212 *See, e.g.*, Companies Act 2006, c. 4 §170, sch. 1 (U.K.).

213 Foss v. Harbottle [1843] 2 HARE 461 (U.K.).

214 In Foss v. Harbottle, there was a problem generally known as "wrongdoer control." *See* David Kershaw, *The Rule in* Foss v. Harbottle *is Dead; Long Live the Rule in* Foss v. Harbottle (LSE Legal Stud. Working Paper No. 5/2013, 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2209061. Kershaw indicated that a need to demonstrate "wrongdoer control" had long been regarded as a pre-requisite to shareholder litigations.

of action is vested in the company as a separate legal entity as opposed to the shareholders personally.[215] In this case, the individual shareholders just commence litigation in the company's name against the alleged wrongdoing directors.[216] The relief they will get is a group relief as opposed to a personal relief.[217] The derivative action is particularly valuable in addressing the first type of agency problem, which is briefly discussed above, in relation to a manager-shareholder conflict.[218] On the other hand, under English law, shareholders may also have standing to sue when they seek to enforce a right or cause of action held in a personal capacity. In this case, they may make an unfair prejudice petition.[219] An unfair prejudice claim is useful in addressing the second type of agency problem where a majority-minority conflict exists. There is a wide range of remedies available in the case of a successful claim but by far the most common form is a buyout order, giving the minority shareholders an exit right.[220] Normally, the derivative action plus an unfair prejudice claim can address different instances of corporate maladministration. However, sometimes, the only way to resolve disputes between different parties within the company is to wind the company up and distribute the assets back to all the shareholders. U.K. law permits this possibility. In this situation, a just and equitable winding-up petition can be brought.[221]

Under English law, there are three types of shareholder actions/remedies. Quite surprisingly, the financial zones have not adopted the English model in a wholesale fashion. For example, the DIFC Court was also aware that its "Companies Law contains no provision for a derivative action."[222] The possibility of a derivative action is enabled by the Rules of the DIFC Courts.[223] The most notable requirement is that a claimant[224] must apply to the Court for permission to continue the claim.[225] However, as opposed to the U.K. approach where a list of mandatory and discretionary factors are laid down in the Companies Act 2006, which guides the courts to give permission or not for the derivative claim, the Rules of the DIFC Courts remain silent on this matter. In the U.K., there are instances where the permission must be denied. Once this "negative test" is passed, there is a list of discretionary factors that the judges should consider in making a decision on

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215 PAUL DAVIES ET AL., GOWER: PRINCIPLES OF MODERN COMPANY LAW 565 (11th ed. 2021).

216 *Id.*

217 DAVIES, *supra* note 215, at 1105–06.

218 *Id.*

219 Companies Act 2006, c. 4, § 994, sch. 1 (U.K.).

220 *Id.* § 996; DAVIES, *supra* note 215, at 557.

221 Insolvency Act 1986, c. 6, § 122, sch. 1 (U.K.).

222 DIFC Courts, Sept. 11, 2017, CFI 016/2015 *(1) Mohammad Abu AlHaj (2) Abu AlHaj Holding v (1) Sheik Sultan Khalifa Sultan Al Nehayan in his Capacity as Director of Gold Holding Ltd (2) Sheik Sultan Khalifa Sultan Al Nehayan* (U.A.E.).

223 Derivative Claims: Rules of the DIFC Courts, Rules 20.63–20.69.

224 *Id.* (stating that under Rule 20.63, the claimant should be "one or more members of the company or body" where a company or other incorporated body is alleged to be entitled to claim a remedy).

225 *Id.* (discussing Rule 20.65).

whether to allow the litigation to proceed.[226] It can perhaps only be presumed that the judges of the DIFC Courts will look to the U.K. law when making such a decision. Meanwhile, the DIFC Companies Law allows an unfair prejudice claim, and the remedies available are broadly like those provided by the U.K. Companies Act.[227] Similarly, a just and equitable winding-up petition is available under the DIFC Insolvency Law.[228]

For the ADGM, the provisions for a derivative action are an almost exact reproduction (except for one major difference) of its U.K. counterpart, where the factors for the courts to consider granting permission or not are set out in the Companies Regulations.[229] Incidentally, the parts related to a derivative claim in the ADGM Companies Regulations and the U.K. Companies Act are labeled as "Part 11."[230] The major difference in the derivative action available in the ADGM is that there is a shareholding threshold requirement. Under the ADGM Companies Regulations, members holding five percent or more of shares in a company can bring a derivative claim.[231] This is different from the U.K. approach, under which a member of a company, even if just holding one share out of numerous shares issued, will still be entitled to bring an action. As to unfair prejudice claims and just and equitable winding-up, both are available in the ADGM.[232]

Meanwhile, under the U.A.E. law, the Commercial Companies Law seems to permit direct action from the shareholders against "the Company, its board of directors, and executive management, if they suffer from any harm as a result of an act carried out by any of the latter."[233] This essentially means that the *Foss v. Harbottle* rule simply does not have any role in the U.A.E. law.

In Qatar, similar to the U.A.E. position, the QFC seems to permit direct action from the shareholders against "a person [who] intentionally, recklessly or negligently commits a breach of any requirement, duty, prohibition, responsibility or obligation which is imposed by or under" the QFC Companies Regulations.[234] As opposed to a "derivative action," here, under this direct action, personal relief can clearly be sought when the wrongdoing person "is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and is otherwise liable to restore the person to the position they were in prior to such conduct."[235] Despite the absence of a derivation action (replaced by a direct action), both an unfair prejudice claim and a just and equitable winding-up

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226 Companies Act 2006, c. 46, § 263 (U.K.).
227 DIFC Comp. Law art. 149.
228 DIFC Insolvency Law No. 1 of 2019, art. 81(e) (2024) (U.A.E.).
229 ADGM Companies Regulations [ADGM Comp. Regs. 2020] art. 285 (2020) (U.A.E.).
230 *See id.* at pt. 11; *see also* Companies Act 2006, pt. 11 (U.K.).
231 ADGM Comp. Regs. 2020 art. 282(3).
232 ADGM Comp. Regs. 2020 arts. 858–60; ADGM Insolvency Regulations 2022 [ADGM Insolv. Regs.] art. 199 (2022) (U.A.E.).
233 Commercial Companies Law No. 32 of 2021 [Comm. Comp. No. 32] art. 166 (2021) (U.A.E.).
234 QFC Companies Regulations No. 2 of 2005 [QFC Comp. Regs. No. 2 of 2005], art. 133 (2022) (Qatar).
235 *Id.*

petition are available under the QFC Regulations.[236] As for the national Qatari law, as observed by Sharar, there are two mechanisms available to shareholders to protect their rights under the Qatari Commercial Companies Law.[237] The first one is that shareholders can pass an ordinary resolution in a general meeting to prompt the company to sue the wrongdoing directors for the damage done to the company.[238] However, as explained before (exactly what happened in the case of *Foss v. Harbottle* itself), this is largely ineffective when the wrongdoing directors have significant shareholding/influence to block the ordinary resolution (requiring fifty percent or more of consent), and thereby any legal action that can be brought by the company itself. Therefore, the law will allow individual shareholders to pursue the company independently of other shareholders if they believe that they have suffered personal damage because of the directors' wrongdoing, and the company has failed to commence legal action.[239]

As for Kazakhstan, Article 63 of the Kazakh Company Law provides for the liabilities of the directors of the company if shareholders suffer damages caused by their actions or inaction to the company and its shareholders. The shareholder (or shareholders) owning (in the aggregate) five or more percent of the voting shares of the company may apply to the chairman of the board of directors with the request to initiate legal action against the wrongdoing officers.[240] This is clearly a derivative-action-like mechanism. Quite like what we see in the case of the ADGM, a threshold of five percent of shareholding is required to prevent an abuse of the judicial process. According to the EBRD, shareholder action, despite being enabled by the law, has nonetheless been virtually non-existent in the country.[241] The AIFC framework is more like the QFC framework. As opposed to a derivative claim, the AIFC company law permits a shareholder (or any other parties who suffer loss as a result) to sue a wrongdoing director directly.[242] This is indeed absurd under the ordinary principle of privity of contract, as there should not be a direct legal relationship between the shareholders (and other parties) and the directors. The danger is that, first, this exposes corporate officers to all sorts of liabilities and

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236 QFC Comp. Regs. No. 2 of 2005, *supra* note 234, at art. 134; QFC Insolvency Regulations No. 5 of 2005 [QFC Insolv. Regs. No. 5] art. 77 (2024) (Qatar).

237 Zain Sharar, *Minority Shareholders' Remedies in Public Shareholding Companies: Comparing The State of Qatar and Australia*, CORP. GOVERNANCE J. 1, 5 (Sept. 3, 2010).

238 Commercial Companies Law No. 5 of 2002 [Comm. Comp. No. 5] art. 115 (2002) (Qatar).

239 *Id.* art. 116.

240 Kazakhstan Law on Joint Stock Companies 2003 [Joint Stock Comp.] art. 63 (2011) (Kaz.).

241 Gian Piero Cigna et al., *Corporate Governance in Transition Economies: Kazakhstan Country Report,* EUR. BANK FOR RECONSTRUCTION & DEV. (Dec. 2017), https://www.ebrd.com/documents/legal-reform/kazakhstan.pdf.

242 AIFC Companies Regulations No. 2 of 2017 [AIFC Comp. Regs. 2017], art. 174 (2024) (Kaz.).

litigation risks.[243] Second, the application of common law can be confusing.[244] However, the AIFC company law does include an unfair prejudice remedy, as seen in the U.K.[245] If a company's affairs are being or have been conducted in a way that is unfairly prejudicial to the interests of its shareholders, the court may grant a range of possible relief to the shareholders.[246] Also, like the U.K., a just and equitable winding-up order is available under the AIFC company law.[247] According to Yeung and colleagues, the notable absence of a derivative action is a rare exception to the AIFC's generally wholesale adoption of the U.K. model.[248]

For a summary of the discussion in this part, see Table 7.[249]

VII. THEIR "COMMON LAW" COURT SYSTEMS

Dr. Michael Hwang SC, former Chief Justice of the DIFC Courts, has described the DIFC as a "common law island in a civil law ocean."[250] Despite this opinion, common law principles, including rules of equity, are not expressly enshrined by the DIFC laws. Under the DIFC Law No. 3 of 2004, the primary law that applies in the DIFC is the DIFC laws. However, the DIFC Courts are also permitted to consider, in the following particular order as per the hierarchy of legal authority: (i) the law of another jurisdiction recognized in DIFC Law as applicable; (ii) the laws of a jurisdiction "agreed between all the relevant persons concerned in the matter" to be suitable; (iii) the laws of a jurisdiction that the DIFC Courts or arbitrators find appropriate; and finally, (iv) the laws of England and Wales. The stance of the Qatar International Court (QIC; formerly known as the Civil and Commercial Court) is equally vague. Despite being labeled as adopting a common law legal structure by commentators, as well as being marketed as such on its website, there is no explicit mention of "common law" in any of its regulations.[251]

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243 The Harbottle rule, which sets out the proper claimant principle, has an important practical rationale. It can eliminate wasteful litigation when a wrong can be put right by only one claim initiated by the company, as opposed to a multiplicity of claims initiated by numerous other parties. This is known as the proper claimant principle. DAVIES, *supra* note 213, at 571.

244 A key doubt is whether certain classic company law cases, such as Harbottle, will still have their place in the AIFC jurisprudence.

245 AIFC Comp. Regs. 2017, art. 175; Companies Act 2006, c.46, § 994 (U.K.).

246 AIFC Comp. Regs. 2017, art. 175; Companies Act 2006, c.46, § 996 (U.K.).

247 AIFC Comp. Regs. 2017, art. 176; Insolvency Act 1986, c. 45, §122(1)(g) (U.K.).

248 Horace Yeung et al., *Institutional Development and the Astana International Financial Centre in Kazakhstan,* 19 WASH. UNIV. GLOB. L. REV. 53, 75 (2020).

249 *See infra* Table 7.

250 MICHEAL HWANG, *Commercial Courts and International Arbitration – Competitors or Partners?*, *in* SELECTED ESSAYS ON DISPUTE RESOLUTION 38, 51 (2018).

251 Zain Sharar & Mohammed Al Khulaifi, *The Courts in Qatar Financial Centre and Dubai International Financial Centre: A Comparative Analysis*, 46 H.K. L. J. 529, 530 (2016); JONATHAN ERCANBRACK, THE TRANSFORMATION OF ISLAMIC LAW IN GLOBAL FINANCIAL MARKETS 292 (2015). The term "common law" is found in Article 8 of the QFC Trust Regulations 2007 but in a rather narrow context.

Schedule 6 of the QFC Law stresses that the QFC Courts "shall apply the QFC Law and regulations issued … unless the parties have explicitly agreed to apply another law."[252] There is a mention of the adversarial principle nonetheless, which can be subtly related to the common law system.[253]

This is in sharp contrast to the approach of the ADGM Courts when they take pride in being "the first jurisdiction in the Middle East to adopt a similar approach to that of Singapore and Hong Kong,"[254] by the direct application of English Common Law. Compared to its Dubai counterpart, there is an explicit reference to the term "common law" under the ADGM laws. Under Article 1 of their Application of English Law Regulations 2015, English common law (including the rules of equity) has direct precedential value in the ADGM courts. The Application Regulations allow the ADGM courts to refer to English common law on an "evergreen" basis, that is, as the body of English case law stands from time to time. As noted by the ADGM Courts, considering that the ADGM enactments have been primarily drafted from English statutory precedents and partly from those of other commercially respected common law jurisdictions, the direct application of common law means "English law has direct precedential value in the ADGM Courts, and that the body of precedent that it contains provides predictability to the law."[255] As for the AIFC Court, Article 13(5) of the AIFC Constitutional Statute provides that the law to be applied is to be "based on the principles and legislation of the law of England and Wales and the standards of leading global financial centers." Article 29(3) of the Court Regulations further provides that the Court will be guided by its own decisions on relevant matters and by final decisions in other common law jurisdictions.

To ensure that the courts can deliver an "authentic common law experience" all zones have drawn on the experience of foreign senior judges to lead their courts. The Founding Chief Justice of the DIFC Courts was Sir Anthony Evans.[256] Before joining the DIFC Courts, he was formerly the Lord Justice of Appeal in the U.K. The current Chief Justice of the DIFC Courts is Justice Wayne Martin from Australia. Lord Woolf was the founding President/Chief Justice of the QFC Civil and Commercial Courts and the AIFC Court. He was formerly the Lord Chief Justice of England and Wales. The current President of the QIC is Lord Thomas of Cwmgiedd, and the current Chief Justice of the AIFC Court is Lord Burnett of Maldon. Lord Hope of Craighead is the first as well as the current Chief Justice of the ADGM Courts. He was the Deputy President of the Supreme Court of the U.K. Other judges of the courts also have a strong common law background. There are

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252 The same is also found in the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules [Qatar Ct. Rules] art. 11 (2009).

253 Qatar Fin. Ctr. L. No. 7 of 2005 [Qatar Fin. Ctr. L. 2005] sch. 6 (2024) (Qatar).

254 *English Common Law: Foundation of ADGM Courts*, ADGM, https://www.adgm.com/adgm-courts/english-common-law (last visited Jan. 31, 2025).

255 AC Network Holding Ltd v. Polymath Ekar SPV1 [2023] ADGMCA 0002, para. 3.

256 *Sir Anthony Evans, the Chief Justice of the DIFC Courts Speech During the Inauguration of the DIFC Courts*, DIFC CTS. (Apr. 17, 2007), https://www.difccourts.ae/media-centre/newsroom/17-april-2007-sir-anthony-evans-chief-justice-difc-courts-speech-during-inauguration-difc-courts.

seven other judges sitting on the ADGM Courts. They are all senior judges/lawyers from the U.K., Australia, and New Zealand. Similarly, the eight justices of the AIFC Court are all from the U.K. In comparison, the DIFC Courts and the QIC are quite different in the sense that they have local judges sitting on them. The judges of the QIC are perhaps the most international when some of them are from non-common law jurisdictions like China and Kuwait.

The DIFC Courts have recorded the largest number of cases to date. This should hardly be surprising, as the DIFC has the longest history among the four zones studied. As of the end of June 2023, 3,665 court judgments are available on the website of the DIFC Courts. These judgments have come from their Small Claims Tribunal, Court of First Instance, and Court of Appeal. The first-ever judgment was recorded in February 2007. In total, 214 court judgments can be accessed from the website of the QIC with the first one recorded in 2009. Naturally, it can be presumed that there should be even fewer cases in the ADGM Courts and the AIFC Court owing to their young age. However, this is indeed not the case, as 627 judgments can be accessed from the website of the ADGM Courts, which is quite a large number. Meanwhile, sixty-nine judgments can be found on the website of the AIFC Court, which is well predictable owing to its size and being the youngest of all.

One of the thorny issues that must be dealt with by the courts is the extent to which they can rely on common law and any other foreign legal principles. As discussed before, the ADGM seems to readily receive English case law. The AIFC appears to be the same as under its Constitution. However, the positions of the DIFC and QFC are quite vague on this matter. Recently, this has been considered in the DIFC case of *the Industrial Group v. El Fadil Hamid*.[257] One of the key issues in the case was whether the torts of malicious prosecution and abuse of process exist in the DIFC law, with the two legal concepts established in English law.[258] The DIFC Court of Appeal made two important points. Firstly, the DIFC law is statutory. The DIFC Courts' role, as common law courts, is to interpret and develop the laws of the DIFC incrementally, in accordance with the methodology of the common law. Secondly, though English law, including English common law, has featured importantly in furnishing the foundations for DIFC law, it cannot be assumed, merely because there has been a common law development in English law, that any such development will be readily transplanted into DIFC law. In this case, the DIFC Court of Appeal found that the torts of malicious prosecution and abuse of process were not part of DIFC law and therefore could not be imported or transplanted into it by virtue of the DIFC "having a common law system." [259]

Another thorny issue is perhaps the potential conflict of jurisdiction between the zones' courts and the national/Emirati courts. In general, the DIFC Courts, for example, deal exclusively with all cases and claims arising out of the DIFC and its operations and any civil or commercial claims or actions. In the DIFC, the Dubai Law No.12 of 2004, or can be known as the Judicial Authority Law, seeks

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257 Indus. Grp. Ltd. v. Mr Abdelazim El Shikh El Fadil Hamid, [2022] DIFC CA 005/006.
258 *See, e.g.*, Crawford Adjusters Ltd. v. Sagicor Gen. Ins. Ltd., [2013] UKPC 17.
259 *See* The Industrial Group v. El Fadil Hamid, [2022] DIFC CA 005/006.

to address the problem.[260] Article 5 of the law outlines the circumstances wherein the DIFC Courts will have exclusive jurisdiction. In general, these cover claims or actions in which a DIFC body is a party; civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; and non-DIFC registered parties who have decided to opt-in.[261] Previously, disputes could only be resolved by the DIFC Courts when the case had a DIFC element and/or connection. However, Dubai Law No. 16 of 2011 now provides all commercial entities with the option to use the DIFC Courts. To do so, a commercial entity can insert the following clause into their contract:

> Any dispute, difference, controversy, or claim arising out of or in connection with this contract, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre.[262]

When the exact wordings are used, there should not be much ambiguity. However, as seen in a recent case between KPMG and a local private equity firm, sometimes a vague clause can be incorporated, such as the one below.[263]

> The services contract is subject to the laws of the United Arab Emirates and the laws of the Dubai Financial Center as appropriate. All disputes arising out of or under the Service Contract are subject to the exclusive jurisdiction of the courts of the United Arab Emirates or the courts in the Dubai International Financial Center as required.

As a result, this case had to be referred to the Joint Judicial Committee. The Joint Judicial Committee was set up in June 2016 pursuant to Dubai Law No. 19 of 2016 to determine conflict of jurisdiction issues arising between the DIFC Courts and the local Emirati Dubai Courts. In this case, the Joint Judicial Committee decided that the local Dubai court had jurisdiction, as opposed to the DIFC Courts.

Like the DIFC, Article 8 of the Qatari Law No. 7 of 2005 stipulates the circumstances under which the Civil and Commercial Court will have jurisdiction over a dispute. However, unlike the post-2011 DIFC, all these circumstances seem to require a QFC element and/or connection. This may explain the low number of cases in their courts compared to the DIFC and ADGM, as discussed above. However, in 2021, the jurisdiction of the QIC was expanded to cover the newly

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260 Judicial Authority Law No. 12 of 2004, art. 7 (2011) (U.A.E.).

261 *Id.* at art. 5.

262 *DIFC Courts Opt in Clauses*, DIFC CTS., https://www.difccourts.ae/application/files/1515/9774/9107/DIFC-Courts-Opt-In-Clause.pdf (last visited Jan. 31, 2025).

263 KPMG Lower Gulf Ltd. v. Abraj Gen. Partner, [2020] DIFC CFI 1 (Cassation Ct.).

established Qatar Free Zones, which are distinct from the QFC.[264] The QIC inevitably also faces a potential conflict of jurisdiction with its local courts. Indeed, in a recent case, the QIC stressed that the Qatari state courts are the default courts in Qatar, and hence other courts (including the QIC) can only avail jurisdiction based on explicit agreement.[265] Meanwhile, the boundary of the ADGM Courts and AIFC Court's jurisdiction likewise is stated in the relevant law.[266] Litigants have the right to contest the jurisdiction of both courts.[267] Unlike Dubai, the other three zones do not have a judicial tribunal, such as the Joint Judicial Committee, in charge of resolving conflicts of jurisdiction between its "onshore" and "offshore" courts. It is up to the individual courts to decide whether they have the competent jurisdiction to accept the case.

For a quick summary of discussions in this part, see Table 8.[268]

VIII. IMPLICATIONS FOR OTHER ASPIRING FINANCIAL CENTERS

For the aspiring financial centers that hope to draw on the experience of the zones, two main questions probably arise. Firstly, will legal transplantation work? Secondly, if it does work, what form should it take? This term, "legal transplant," was perhaps most famously coined by Alan Watson to indicate "the moving of a rule or a system of law from one country to another."[269] On a general theoretical level, Watson believed that legal transplants between different societies are feasible on the proposition that "there is no exact, fixed, close, complete, or

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264 The Qatar Free Zones are managed by a different regulatory authority and can use the QFC Courts. However, unlike the QFC, the Qatar Free Zones do not have a bespoke set of laws and regulations. Incentives across four key areas tax and capital, corporate structuring, workforce options, property solutions, and strategic infrastructure have been promised to the entities within the Free Zones.

265 A v. B, [2023] QIC (F) 16.

266 ADGM Founding Law No. 4 of 2013 [ADGM Found. No. 4] art. 13(8) (as amended by Abu Dhabi Law No. 12 of 2020) (U.A.E.); ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations (2015) [ADGM Ct. Regs.] art. 16 (2020) (U.A.E.); CONST. OF THE AIFC, art. 13.

267 *See, e.g.*, AIFC Court Rules, pt. 8 (2018) (Kaz.). The jurisdictional conflict between Abu Dhabi Emirati courts and the ADGM courts can be seen in *A6 v. B6* [2023] ADGMCFI 0005. In Kazakhstan, whilst there has not been a case addressing the issue, Bakenova has suggested some hypothetical circumstances that there may be a jurisdictional conflict between the AIFC Court and Kazakhstan state courts, involving certain investment contracts and foreign entities, see Asem Bakenova, *AIFC Court as Your Dispute Resolution Forum: What You Need to Know,* MORGAN LEWIS (Jan. 26, 2022), https://www.morganlewis.com/pubs/2022/01/aifc-court-as-your-dispute-resolution-forum-what-you-need-to-know. Similarly, Michael Blair KC, as the Chairman of the AIFC Advisory Council has his own reservations that local non-AIFC participants can freely choose the AIFC Law as the governing law in their commercial contracts, because of restrictions under the Kazakhstan Civil Code which may limit the freedom of choice of law in contracts. MICHEAL BLAIR, THE LAW OF THE AIFC 174–75 (2020).

268 *See infra* Table 8.

269 ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 21 (1974).

necessary correlation between social, economic, or political circumstances and a system of rules of private law."[270] Certainly, whether this proposition indeed fits the reality can be subject to debate. Some believe a transfer of legal rules cannot be divorced from wider institutional settings of both the "donors" and the "receivers." Legrand and Teubner contend that persistence such as legal culture, legal mentalities, and the deep structures of law will constrain and probably overcome the competitive forces pushing for a global convergence.[271] The success of legal transplants largely depends on the circumstances in which the law was imported and the similarities of the parties' legal cultures.[272] As a result, the notion of "transplant effect" has been suggested by Pistor and colleagues.[273] The demand for law is more important than the supply of law in the legal transplantation process. As for the four zones, the demand of law certainly exists because of the countries' national economic agenda to diversify their economies and deepen their financial markets.

The theory and practice of legal transplants sparks collateral debates on the convergence and divergence of legal systems because the borrowing and transferring of laws and legal institutions between different jurisdictions, and the tendency to borrow from a seemingly superior system, may lead to the convergence of national legal systems. For example, Hansmann and Kraakman once predicted that corporate laws around the world would converge toward the Anglo-American model.[274] The four zones investigated in this article provide another example. If the institutional model works, it may readily be used by other countries. Of course, one issue is whether there are indeed vast differences between the common and civil law.[275] Looking more closely, there are similarities in the way that they deal with various aspects of sales of goods, contracts, tortious liability, and in their forms of business organization.[276] For example, as observed by Armour and colleagues,

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[270] Alan Watson, *Legal Transplants and Law Reform*, 92 L. QUARTERLY REV. 79, 80–83 (1976). *See also* Alan Watson, *Comparative Law and Legal Change*, 37 CAMBRIDGE L. J. 313, 313–14 (1978).

[271] Pierre Legrand, *Comparative Legal Studies and Commitment to Theory*, 58 MOD. L. REV. 262, 271–72 (1995); Pierre Legrand, *European Systems Are Not Converging*, 45 INT'L & COMPAR. L. QUARTERLY 52, 61–62 (1996); Pierre Legrand, *The Impossibility of "Legal Transplants*,*"* 4 MAASTRICHT J. EUR. & COMPAR. L. 111, 116–18 (1997). For a summary of Legrand's ideas, see Gunther Teubner*, Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 11, 15 (1998).

[272] Otto Kahn-Freund, *Uses and Misuses of Comparative Law*, 37 MOD L. REV. 1, 13 (1974); PIERRE LEGRAND, *What Legal Transplant?*, *in* ADAPTING LEGAL CULTURES 55, 60 (David Nelken & Johannes eds., 2001). Legrand said, "Law is a polymeric signifier which connotes cultural, political, sociological, historical, anthropological, linguistic, psychological and economic references." Watson, *supra* note 269, at 27.

[273] Berkowitz et al., *supra* note 36; Katharina Pistor et al., *Evolution of Corporate Law and the Transplant Effect: Lessons from Six Countries*, 18 WORLD BANK RSCH. OBSERVER 89, 91 (2003).

[274] Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. J. 439, 455 (2000).

[275] *See* PETER DE CRUZ, COMPARATIVE LAW IN A CHANGING WORLD 514–16 (3d ed. 2007).

[276] *Id.* at 499.

some features of a company are present universally, such as separate legal personality, limited liability, and transferable shares.[277] As mentioned before, Roe is very right to point out that the modern regulatory architecture of financial markets, that is, a set of bespoke corporate and financial laws, revolving around an efficient public regulator is never an intrinsic common law institutional advantage.[278]

Therefore, common law is not necessarily the only choice that other aspiring financial centers can draw upon. As seen from the above discussions, truly wholesale legal transplantation has never been adopted by the four zones. Instead, there has been adaptive transplantation with varying degrees of adaptations from the English model, other common law jurisdictions, and international best practices.[279]

In any case, common law, particularly English common law, has been the "headline" choice of the four zones. It can make sense. As indicated by the ADGM, it is a "deliberate choice."[280] Firstly, English common law is widely regarded as one of the most sophisticated regimes governing commercial arrangements in the world and is the governing law of choice for commerce.[281] Secondly, a newly established legal center like the ADGM can directly benefit from cases testing and reapplying long-established common law principles, as well as from any ongoing legal developments from the English courts and other common law jurisdictions with commercial and financial significance. In a speech at the Supreme Court of Kazakhstan, Sir Jack Beatson, a justice of the AIFC Court, also explained the reasons for the AIFC choice.[282] Sir Jack reiterated the two reasons given by the ADGM that, English common law has a proven track record and proven foundational principles relevant to commercial and regulatory law trusted by the international business community for over a century. Also, in a common law system, the decisions of common law judges are sources of law that are binding precedents for decision-making in later cases. This means that legal principles can be developed incrementally and kept up to date without producing uncertainty. One further point made by Sir Jack is that an independent judiciary that is committed to the rule of law is valuable. The AIFC Court is composed of highly respected judges with significant practical experience. Michael Blair KC, by reflecting on his experience of helping build up the AIFC as the Chairman of the Legal Advisory Council, believes that the model of a financial center in a civil law country, equipped with common law-based legislation and with a Court system staffed by

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277 KRAAKMAN, *supra* note 155, at 5–14.

278 Roe, *supra* note 43, at 481.

279 For another assessment by Ilias Bantekas, see Ilias Bantekas, *Transplanting English Law in Special Economic Zones in Asia: Law as Commodity*, 17 ASIAN J. COMPAR. L. 305, 307 (2022).

280 *English Common Law: Foundation of ADGM Courts*, *supra* note 254.

281 *See, e.g.*, Ilias Bantekas, *The Globalization of English Contract Law: Three Salient Illustrations*, 137 L.Q. REV. 330, 330 (2021).

282 Rt. Hon. Sir Jack Beatson FBA, THE AIFC COURT AND THE COMMON LAW METHOD OF RESOLVING COMMERCIAL DISPUTES AND ISSUES ARISING FROM REGULATORY DECISIONS (Apr. 24, 2018) (transcript available at https://court.aifc.kz/uploads/Lecture%20RJ.pdf).

English judges applying the law as so imported "has been working very well so far."[283]

Looking at the numbers, these zones certainly have witnessed some varying degrees of success. According to their most recent annual reports, as of 2021, the DIFC, for example, had a total number of 3,644 active companies within the zone. The banking assets and the asset management portfolio amounted to USD 198.5 billion and USD 151.4 billion, respectively.[284] Meanwhile, the ADGM had 2,932 registered entities and the assets management sector was worth USD 33 billion.[285] For the QFC, there were 1,283 registered companies.[286] The zone particularly took pride in their Fintech segment which was worth USD 34.5 billion. For the AIFC, there were 1,173 companies attracting USD 6.2 billion in investments.[287] The AIFC is the youngest and the smallest.

Another yardstick for measuring the success of these financial centers will be the perception of the market regarding how competitive they are. For this, the Global Financial Centre Index may provide a good indicator.[288] In the recent index, which was published on March 23, 2023, the top four markets are New York, London, Singapore, and Hong Kong, meaning that they are the leading markets in the world, incidentally all supported by their common law system. The highest ranking market in a civil law country is Shanghai, which is ranked seventh on the Global Financial Centre Index. Amongst the zones investigated in this article, the top is Dubai, at 22nd, and is followed by Abu Dhabi at 35th, then Doha at 64th, and finally Astana at 66th. It is worth noting that 130 financial centers were surveyed by the Global Financial Centre Index. This means that all zones except the AIFC are in the top half of the league table. Michael Blair KC acknowledges the (comparatively) weak performance of the AIFC in this regard and believes it is important to raise awareness of the zone's activities, attractiveness, and legal regime.[289] In addition, the DIFC perhaps is the oldest, and the most successful of the four zones. For example, Erie hailed the DIFC as a "new legal hub" that can rival Singapore and Hong Kong and praised its strong reputation for professionalism.[290]

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283 BLAIR, *supra* note 267, at 189.

284 Francis Bignell, *DIFC 2021 Annual Report Published – Reports Highest Ever Annual Revenue*, FINTECH TIMES (Feb. 21, 2022), https://thefintechtimes.com/difc-2021-annual-report-published-reports-highest-ever-annual-revenue/.

285 *Annual Report 2020*, ADGM (2021), https://www.adgm.com/documents/publications/en/annual-report-2020/adgm-annual-booklet-2020.pdf?la=en&hash=045312653e91d2d6f89de1b80c12baf1.

286 *Annual Report 2021*, QFC (2022), https://www.qfc.qa/en/media-centre/insights/qfc-annual-reports/digital/2021#:~:text=With%20a%20focus%20on%20maximising,of%201%2C000%20companies%20by%202022.

287 *AIFC Annual Report 2021*, AIFC (2022), https://aifc.kz/annual-reports/aifc-annual-report-2021/.

288 *The Global Financial Centres Index*, Z/YEN GRP. (2023), https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/.

289 BLAIR, *supra* note 267, at 160.

290 Matthew Erie, *The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution*, 60 VA. J. INT'L L. 225, 297 (2019).

While the overall positive experience of the four zones may entice other followers, one example of failure was Honduras' Zone for Employment and Economic Development (ZEDE).[291] As opposed to a typical special economic zone where there may be nothing more than incentives in taxes, customs duties, and other preferential treatment, the vision of ZEDE is more akin to the four zones studied here, with its own bespoke laws and court system. It was meant to be a common law zone within Honduras, a civil law country.[292] The seed was first planted as early as 2013 when an amendment to the Honduran constitution was made to enable ZEDE. On April 20, 2022, the Honduran National Congress approved the total abolishment of ZEDE. It is important to highlight that the failure of ZEDE is not a result of the institutional model pioneered by the DIFC being insufficiently robust. Rather, it is influenced by other factors. Commentators believe that the violation of indigenous rights, as well as corruption allegations, are amongst the various reasons leading to the failure of the project.[293]

IX. CONCLUSION

From the detailed and comprehensive comparisons, Dubai is the pioneer in using the institutional model, which Dr. Michael Hwang SC, former Chief Justice of the DIFC Courts, vividly referred to as a "common law island in a civil law ocean."[294] Perhaps because of its first-mover role, the DIFC is also a pioneer in some innovative solutions in the zone's operation. For example, to resolve the jurisdictional conflict between local Emirati courts and the DIFC Courts, a Joint Judicial Committee is in place to make a binding decision for cases having the problem of *forum non conveniens*. Through our investigation, despite all zones adopting the headline model of "common law island in a civil law ocean," how legal transplantation has occurred is somewhat different. The seven director duties of the UK Companies Act 2006 may provide a good indication of the process.[295]

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[291] Torivio Fodder, *History, Enterprise, and Reform: Honduran ZEDE Regimes and Indigenous Peoples' Rights*, 10 ARIZ. J. ENV'TAL L. & POL'Y 68, 74 (2019); Jeffrey Mason et al., *The Honduran ZEDE Law, from Ideation to Action*, 1 J. SPECIAL JURISDICTIONS 107, 107 (2021); Tom Bell, *Common Law Zones*, 1 J. SPECIAL JURISDICTIONS 57, 57 (2021).

[292] Article 14 of the ZEDE Law says that ZEDE Courts "shall be created by the Judiciary through the Judicial Council at the proposal of the Committee for the Adoption of Best Practices and shall operate under the common law or Anglo-Saxon tradition, or any other in accordance with Article 329 of the Constitution of the Republic."

[293] *Honduras will not be ZEDE-d*, PBI HONDURAS (July 28, 2021), https://pbi-honduras.org/news/2021-07/honduras-will-not-be-zede-d; Ryan C. Berg & Henry Ziemer, *What Are the Zones for Employment and Economic Development in Honduras?* (Apr. 27, 2022), https://www.csis.org/analysis/what-are-zones-employment-and-economic-development-honduras.

[294] Hwang, *supra* note 250, at 51.

[295] Companies Act 2006, c. 2, §§ 171–77 (UK). *See* Part VI Section B, of this article for the relevant discussions.

The DIFC, ADGM, and the AIFC have all reproduced these seven duties into their statutes. The QFC has deliberately left out two of the seven duties. Therefore, it is prudent to suggest that adaptive transplantation has taken place, as opposed to a wholesale legal transplantation. Contract law may also be an example. In the UK, this area of law is largely based in common law (case law). However, the DIFC, QFC, and AIFC all have a contract regulation in place, except for the ADGM. Indeed, ADGM is perhaps the one zone that is most faithfully following the UK model. It is directly applying selected UK statutes (without reproducing them) as well as common law. On the latter aspect, this article reveals the difference in using "common law" in the zones, demonstrating another difference in the legal transplantation process. In the DIFC and QFC, the use of precedents is mainly interpretative, that is, to understand how the respective statutes in the zones apply.

The source of the two zones' laws is chiefly statutory. Whereas in the ADGM and AIFC, case law from England and Wales and other common law jurisdictions can be a source of law. Faced with the successful experience of the zones, especially for Dubai which has firmly established itself as a real estate, tourism, and financial and legal hub in the Middle East, there is a question of how other aspiring financial centers/countries may learn from their experience. Largely, the QFC, ADGM, and AIFC can be considered successful followers. However, at least one recent example of failure is Honduras's ZEDE. To answer this important question, we believe the pre-existing debates around legal transplantation will be helpful. The success of legal transplantation cannot be alienated from the wider social, economic, or political circumstances of each country. Some countries will possess the circumstances enabling the process of legal transplantation; some may in contrast hinder it.

IX. APPENDIX

Table 1 – Summary of Key Differences between Common Law and Civil Law Systems[296]

Feature	Common Law	Civil Law
Written Constitution	Not always	Always
Judicial Decisions	Binding	Not binding on third parties; however, administrative and constitutional court decisions on laws and regulations binding on all
Trial Style	Adversarial	Inquisitorial
Writings of Legal Scholars	Little influence	Significant influence in some civil law jurisdictions
Freedom of Contract	Extensive – only a few provisions implied by law into contractual relationship	More limited – a number of provisions implied by law into contractual relationship

Table 2 - Summary of the Constitutional Foundations of the Zones[297]

DIFC	QFC	ADGM	AFIC
• UAE Constitution (Art. 121) • Federal Law No. 8 of 2004 • Federal Decree No. 35 of 2004 • Dubai Law No. 9 of 2004	• Amended Provisional Constitution of 1972 (Arts. 23, 34 & 51) • Qatari Law No. 7 of 2005	• UAE Constitution (Art. 121) • Federal Law No. 8 of 2004 • Federal Decree No. 35 of 2004 • Abu Dhabi Law No. 4 of 2013	• Constitution of the Republic of Kazakhstan (Art. 2) • Constitution Statute No 438-V ZRK of 7 December 2015

[296] *Key Features of Common Law or Civil Law Systems*, WORLD BANK, https://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-systems/common-vs-civil-law (last visited Feb. 2, 2025); Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15 AM. J. COMPAR. L. 419 (1966).

[297] Summarised from the texts in Part III.

Table 3 – Summary of Key Features of the National Systems of the Zones[298]

	UAE	Qatar	Kazakhstan
Legal System	Mix of Civil and Islamic	Mix of Civil and Islamic	Civil (without notable Islamic influence, despite the religion is practiced by the majority of population)
Court System	Federal and Emirati; Sharia, civil and criminal courts	Sharia and *Adlia* (civil) courts	Three-tier court (district and city, appeal and supreme); Special Financial Court of Almaty
Quality of Business Regulation (ranking by World Bank out of 190 economies)	16th	77th	25th

Table 4 – Key General Features of the Zones[299]

	DIFC	ADGM	QFC	AIFC
Written Rules	A dedicated set, largely based on English law, separate from the National framework	A dedicated set, largely based on English law, separate from the National framework, in conjunction with directly applicable English statutes	A dedicated set, largely based on English law, separate from the National framework	A dedicated set, largely based on English law, separate from the National framework
Selected Strengths (as advertised by them)	• 100% ownership • No restriction on capital repatriation • Tax efficiencies	• 100% ownership • 0% corporate and income tax • No restrictions on repatriations of profits	• Up to 100% foreign ownership • 100% repatriation of profits • 10% corporate tax on locally-sourced profits	• Special tax regime • Simplified visa regime

298 Summarized from the texts in Part IV.

299 *See, e.g.*, *Business in DIFC.*, DIFC, https://www.difc.ae/business (last visited Feb. 10, 2025) (showing how the DIFC advertises benefits of operating in the zone in this webpage); *cf.*, *QFC Benefits*, QATAR FIN. CTR., https://www.qfc.qa/en/about-qfc/qfc-benefits (last visited Feb. 10, 2025).

Table 5 – Availability of Business Forms in the Zones

	DIFC	ADGM	QFC	AIFC
National Frame-work	Different types of business associations as provided in Article 9 of the U.A.E. Commercial Companies Law, also covers General Partnerships and Limited Partnerships		Different types of business associations as provided in Article 4 of the Qatari Commercial Companies Law, also covers General Partnerships and Limited Partnerships	Three forms of partnerships and joint stock companies, as provided by the Civil Code, the Laws on limited and additional liability partnerships, and on Joint Stock Companies
Within the Zone	Akin to the U.K., with dedicated regulations for each of the three forms of partnerships, and a comprehensive set of company regulations dealing with specific forms of companies like investment companies and cell companies.	Akin to the U.K., with three forms of partnerships available, as provided by the ADGM regulation and relevant U.K. statutes; and company law has a specific part to deal with cell companies.	Three forms of partnerships, regulated by Partnership Regulations 2007, and the Limited Liability Partnerships Regulations 2005; company law has special parts for companies like cell companies, and International Business Companies (but note the part on the latter contains nothing at the moment).	Akin to the U.K., with dedicated regulations for each of the three forms of partnerships; company law has special parts for companies like investment companies and cell companies.

Table 6 – Director Duties in the Zones

	DIFC	ADGM	QFC	AIFC
National Frame-work	Article 22 the U.A.E. Commercial Companies Law; a single general standard		Duties of loyalty and due care, covered by Art. 108–111 & 113 of the Qatari Commercial Companies Law	List of seven duties provided by Art. 62 of the Kazakh Company Law
Within the Zone	Verbatim adoption of U.K. position	Verbatim adoption of U.K. position	Selective adoption of U.K. position	Verbatim adoption of U.K. position

Table 7 – Shareholder Remedies in the Zones

	DIFC	ADGM	QFC	AIFC
National Frame-work	Article 166 of the U.A.E. Commercial Companies Law, a direct action against wrongdoing corporate officer is possible.		Require an ordinary resolution to prompt the company to sue (Art. 115); failing which, a direct personal action is possible (Art. 116 of Qatari Commercial Companies Law)	Article 63 of the Kazakh Company Law permits derivative action (but requires a shareholding threshold of 5%+)
Within the Zone	Derivative action available (but no guidance on how permission may be granted); Unfair prejudice claim and just and equitable winding up also available.	Derivative action available (but requiring a shareholding threshold of 5%+); Unfair prejudice claim and just and equitable winding up also available.	Direct action in lieu of derivation action; unfair prejudice claim and just and equitable winding up also available.	Direct action in lieu of derivation action; unfair prejudice claim and just and equitable winding up also available.

Table 8 – The Independent Court Systems in the Zones

	DIFC	ADGM	QFC	AIFC
Chief Justice (or the equivalent)	Justice Wayne Martin (Australia)	Lord Hope of Craighead (UK)	Lord Thomas of Cwmgiedd (UK)	Lord Burnett of Maldon
Judges	A mix of local and common law judges	Common law judges	A mix of local, civil and common law judges	Judges from the UK
Role of "Common Law"	Interpretative	Can set out new legal principles	Interpretative	Can set out new legal principles
Jurisdictional Conflicts with Local Courts	Handled by the Joint Judicial Committee	Determined by Individual Courts	Determined by Individual Courts	Determined by Individual Courts